United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 18789

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

870

ON PETITION TO REVIEW AND CROSS-APPLICATION TO ENFORCE A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

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147 NLRB No. 147

D-6230
New Orleans, La.

UNITED STATES OF AMERICA

BEFORE THE

National Labor Relations Board

July 1, 1964

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, and DELTA STEAMSHIP LINES, INC.	Case No. 15-CC-189
NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, and BLOOMFIELD STEAMSHIP COMPANY.	Case No. 15-CC-190

Decision and Order.

On January 23, 1964, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that said complaint be dismissed in its entirety, as set forth in his Decision attached hereto. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to Section 3(b) of the National Labor Relations Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial

error was committed. The rulings are hereby affirmed. The Board has considered the entire record, including the Trial Examiner's Decision, the exceptions, and brief, and adopts the findings and conclusions of the Trial Examiner only to the extent consistent herewith.

The complaint in this case covers the picketing and other conduct of the National Maritime Union of America (NMU) at the Poydras Street wharf and the Cotton Warehouse wharf in the Port of New Orleans. The Poydras Street wharf is used as a marine terminal for ships owned by Delta Steamship Lines, Inc., herein called Delta, while the Cotton Warehouse wharf is used for similar purposes in connection with vessels owned by Bloomfield Steamship Company, herein called Bloomfield.

Delta and Bloomfield are parties to collective-bargaining agreements with the Marine Engineers Beneficial Association, herein called MEBA, and other labor organizations, but have no bargaining relationship with the NMU. The NMU concedes that its activity at the Poydras Street and Cotton Warehouse wharves was unrelated to a labor dispute with these or any other employers engaged in operations at said locations. Rather, its action amounted to an extension to the Port of New Orleans of a retaliatory campaign against MEBA, because of that Union's picketing of the SS *Maximus* in the Port of Philadelphia.[1]

NMU pickets first appeared at the Delta and Bloomfield wharves on June 17, 1963,[2] and were finally withdrawn on June 20.[3] During the picketing, employees and other persons refused to cross the picket line, causing a cessation

[1] The *Maximus* was manned by members of the NMU, and its affiliate, the Brotherhood of Marine Officers. As a result of MEBA's picketing, the *Maximus* was idled in Philadelphia from June 10 through June 21.

The Board has simultaneously considered two other cases involving the NMU's campaign against MEBA in other ports. See *National Maritime Union of America (Houston Maritime Association)*, 147 NLRB No. 142, involving NMU's picketing at Houston and Galveston, Texas; and *National Maritime Union of America (Weyerhaeuser Lines)*, 147 NLRB No. 144, involving related conduct in Philadelphia, Pennsylvania.

[2] All dates refer to 1963, unless otherwise indicated.

[3] The *Maximus* dispute was settled on this date.

of normal repair, maintenance, and cargo operations aboard the SS *Del Valle* and the SS *Del Mar*, owned by Delta and berthed at Poydras Street, and the SS *Neva West*, owned by Bloomfield and berthed at the Cotton Warehouse wharf.

The complaint alleged that Respondent violated 8(b)(4)(i) and (ii)(B) by inducing and encouraging individuals employed by Delta, by Bloomfield, and by Dixie Machine, Metal and Welding Works, Inc., herein called Dixie Machine, as well as by other persons, to engage in work stoppages;[4] and by restraining and coercing all of said persons, for an object of forcing or requiring them to cease doing business with other persons.

The Trial Examiner recommended dismissal of the complaint, finding that the picketing did not induce work stoppages, and concluding that Respondent's action sought to force another labor organization to cease picketing in another port and hence was not for an object proscribed by the Act. The General Counsel excepts, contending that the uncontradicted evidence clearly substantiates the allegations of the complaint. We find merit in the General Counsel's exceptions. Contrary to the Trial Examiner, we contended that Respondent's picketing was designed to induce neutral employees to refrain from working the vessels of Delta and Bloomfield, and thereby to cause the general disruption of stevedore and maintenance opera-

[4] Work stoppages during the period of picketing (June 17-20) occurred as follows: (1) On June 17 and 18, stevedores, carpenters and painters assigned by Delta to work the SS. *Del Valle* refused to cross the picket line; (2) Buck Kriehs and Company and Best Electric Company (whose superintendent refused to cross the picket line), both of which were engaged by Delta to perform repairs aboard the *Del Valle*, did not work while NMU pickets were present; (3) On June 19, cargo operations aboard the SS. *Del Mar* were suspended because stevedores honored the picket line; (4) On June 17, dock workers employed by States Marine Agency, Bloomfield's berth agent in New Orleans, engaged in a work stoppage and did not return to work until the pickets were moved from an area outside the Cotton Warehouse to the gangway of the *Neva West*; (5) In the period from June 17-20, the *Neva West* could not be loaded because stevedores, ordered by States Marine Agency from T. Smith and Company, a stevedoring contractor, honored the picket line; and (6) Dixie Machine, engaged to perform repairs aboard the *Neva West* could not complete the job because an employee honored the picket line.

tions that did in fact occur at the picketed wharves. In so finding, we are mindful of the fact that in the maritime-longshore industry, a picket line is known for its "signal" effect—that all union men make common cause with the picketing union.

But most persuasive is the record evidence which affirmatively establishes Respondent's intention of using the picket line as a signal for union members, employed by persons engaged on the above-named ships, to cease work. Thus, on June 17, Edward Theodore, Jr., a delegate of an ILA[5] Local, representing dock workers employed at the Cotton Warehouse wharf, upon investigation of work stoppages involving members of his union, was informed by an NMU picket, that, "We are not picketing the docks. . . . We are picketing the ship to keep longshoremen from going on." On another occasion, a picket rejected a request by Tillis Gauthier, a pipe fitter employed by Dixie Machine, for permission to board the *Neva West* to repair a line, stating: "No . . . only people with personal belongings was allowed to go."[6]

Added to these clear indications as to the purpose of the picketing, is a conversation between Gerard E. Weickoff, Bloomfield's vice president for New Orleans operations, and NMU Port Agent George, wherein George denied Weickoff's plea that pickets be removed to allow a 6-hour loading job which would permit the *Neva West* to sail, with the following comment: "This is the situation. . . . This

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[5] International Longshoremen's Association.

[6] The Trial Examiner rejected the statements of the pickets as clearly hearsay and not binding upon the Respondent. We disagree. The Board has given weight to such evidence, where as here, the statements and actions of the unidentified individuals occurred in circumstances intimately related to the activities sponsored by the union and were consistent with the actions or policies of union officials. *Highway Drivers & Helpers, Local 107, etc. (Riss and Company)*, 130 NLRB 943, 945, 957. As the uncontradicted testimony in the instant case attributes the statements to persons identified as NMU pickets, who were encountered by the witnesses at the *locus* of NMU action, and as these statements were related to and consistent with expressions by NMU Port Agent George and the overall conduct of Respondent, we reject the Trial Examiner's view that the testimony is incompetent and of no probative value.

has been going on for some time and this action has become necessary. We realize your position, however, there is nothing we can do about it. . . . We just want you to make a lot of noise." When Weickoff indicated that he did not know how much noise Bloomfield could make,[7] George said, "Well I want you to call Paul Hall and tell him to call off the MEBA pickets on the *Maximus.*"[8]

The above facts negate Respondent's contention that its picketing was purely informational in purpose. Its use of the picket line as an appeal that all union members make common cause and refuse to perform their duties behind the picket lines is borne out by the statements of pickets to Theodore and Gauthier, and by Port Agent George's indication to Weickoff that Respondent wanted the shipping companies to make a "lot of noise and bring pressure to bear directly upon the SIU to compel a cessation of MEBA's action against the *Maximus.*

In these circumstances, including the fact that Respondent had no dispute with any employer engaged at the picketed wharves and on the record as a whole, we are satisfied that Respondent's conduct was intended to prevent all cargo and maintenance operations aboard the picketed ships by inducing waterfront labor not to perform their normal duties behind the picket line, and thereby to coerce and restrain the neutral employers responsible for the operation and servicing of said vessels, all for *an* object of causing a cessation of business as between the neutral employers so engaged.

Having found that Respondent's picketing had at least an object within the ban of 8(b)(4)(B), it is of no consequence that the Respondent's ultimate aim was to force a cessation of picketing by another union in another port.

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[7] Bloomfield had previously sought the assistance of various maritime and commercial trade associations in connection with the picketing at the Cotton Warehouse wharf.

[8] Paul Hall is the International President of the Seafarer's International Union which the NMU charges was the sponsor of MEBA in the latter's action against the *Maximus.*

The Board in determining legality of object does not differentiate between the ultimate, alternative, conditional, or immediate nature of the various objectives that may be involved in the activities of a labor organization.[9] However denominated, if *an* object is proscribed by subparagraph (B), an attempt to achieve it by means within 8(b)(4)(i) or (ii) is unlawful.[10] As a departure from these well established principles is not warranted by the fact that Respondent's conduct was founded upon an interunion controversy, over representation, rather than a dispute with an employer[11] we reject the Trial Examiner's view that the unlawful extension of the dispute to neutral steamship owners, berth agents, marine repair firms, and stevedore companies was justified because merely an intermediate step in achieving an end, which itself was beyond the reach of Section 8(b)(4)(B).[12]

For the above reasons we find contrary to the Trial Examiner, that Respondent violated Section 8(b)(4)(i) and (ii)(B) by inducing and encouraging individuals employed by Delta, Bloomfield, States Marine Agency, T. Smith and Company, Best Electric Company, and Dixie Machine to refuse in the course of their employment to perform services aboard the SS. *Del Valle*, the SS. *Del Mar* and the SS. *Nera West*, and by coercing and restraining said employers and Buck Kriehs and Company, with an object of forcing or requiring said employers to cease doing business between

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[9] *Retail Clerks Union, Local 770, AFL-CIO (Food Employers Council)*, 145 NLRB No. 33, page 2. *International Longshoremen's Association (Board of Harbor Commissioner's)*, 137 NLRB 1178, 1184, enfd. 2d , (C. A. 3, May 14, 1964).

[10] *N. L. R. B.* v. *Denver Building Trades*, 341 U. S. 675, 688.

[11] See *Local 1355, International Longshoremen's Association (Maryland Ship Ceiling Company)*, 146 NLRB No. 100, enf. denied on other grounds; F. 2d , (C. A. 4, May 21, 1964).

[12] The Trial Examiner relied upon the Second Circuit's decision in *Douds* v. *International Longshoremen's Association*, 224 F. 2d 455 (1955), which is inconsistent with the cases cited in footnote 9, *supra*. See also *Maryland Ship Ceiling Company*, *supra*. Accordingly, we do not view the *Douds* v. *ILA* decision as controlling herein.

themselves and with other persons within the meaning of the Act.[13]

The Effect of the Unfair Labor Practices Upon Commerce.

The activities and conduct of the Respondent National Maritime Union of America, AFL-CIO, occurring in connection with the operations of Delta Steamship Lines, Inc.; Bloomfield Steamship Company; States Marine Agency; T. Smith and Company; Buck Kriehs and Company; Best Electric Company; and Dixie Machine, Metal and Welding Works, Inc.,[14] and of other employers engaged in commerce or an industry affecting commerce in the Port of New Orleans, Louisiana, described above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and between the States and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy.

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to remedy the unfair labor practices and to otherwise effectuate the policies of the Act.

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[13] See *United Maritime Division, Local 333 (New York Shipping Association)* 107 NLRB 686. *Miami Newspaper Printing Pressmen Local No. 46 (Knight Newspapers, Inc.)*, 138 NLRB 1346, 1353, enfd. 322 F. 2d 405 (C. A. D. C.).

[14] The Trial Examiner properly found that Delta and Bloomfield are engaged in commerce. We further find that States Marine Agency (engaged in the general husbandry of vessels used in interstate and foreign seaborne commerce), T. Smith and Company (engaged in general stevedore operations), Buck Kriehs and Company, Best Electric Company, and Dixie Machine, Metal and Welding Works, Inc., (all engaged in maritime repair and maintenance work aboard vessels engaged in interstate and foreign commerce), are engaged in activities bearing a close and intimate relationship to the maritime industry and are thereby engaged in an industry affecting commerce within the meaning of the Act. See *Sheet Metal Workers, Int'l Assn., Local 299 (S. M. Kisner & Sons)*, 131 NLRB 1196, 1197-1199.

CONCLUSIONS OF LAW.

1. Respondent is a labor organization within the meaning of the Act.

2. Delta Steamship Lines, Inc., and Bloomfield Steamship Company are persons engaged in commerce within the meaning of the Act.

3. States Marine Agency; T. Smith and Company; Buck Kriehs and Company; Best Electric Company; and Dixie Machine, Metal and Welding Works, Inc., are persons engaged in an industry affecting commerce within the meaning of the Act.

4. By inducing and encouraging employees of Delta Steamship Lines, Inc.; Bloomfield Steamship Company; States Marine Agency; T. Smith and Company; Best Electric Company; and Dixie Machine, Metal and Welding Works, Inc., in the Port of New Orleans, Louisiana, to engage in strikes or refusals in the course of their employment to perform services with an object of forcing or requiring said persons to cease doing business with each other and with other persons, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B), and Section 2(6) and (7) of the Act.

5. By coercing and restraining said persons and Buck Kriehs and Company with an object of forcing or requiring them to cease doing business with each other and with other persons, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(B), and Section 2(6) and (7) of the Act.

ORDER.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, it is ordered that the National Maritime Union of America, AFL-CIO, its officers, agents, and representatives, shall:

Decision and Order.

1. Cease and desist from:

(a) Inducing or encouraging individuals employed in the Port of New Orleans, Louisiana, by Delta Steamship Lines, Inc.; Bloomfield Steamship Company; States Marine Agency; T. Smith and Company; Best Electric Company; and Dixie Machine, Metal and Welding Works, Inc., or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is to force or require any of the foregoing persons to cease doing business with each other or any other person.

(b) Threatening, coercing or restraining in the Port of New Orleans, Louisiana, said persons and Buck Kriehs and Company, or any other person engaged in commerce or an industry affecting commerce, where an object thereof is to force or require any of the foregoing persons to cease doing business with each other or with any other person.

2. Take the following affirmative action which is hereby found necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in each of the Respondent's business offices, meeting halls, and other places in New Orleans, Louisiana, where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix."[15] Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region after being duly signed by an authorized representative of said Respondent, shall be posted by said Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days. Reasonable steps shall be taken

[15] In the event that this Order is enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "A Decision and Order."

by said Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Mail signed copies of the notice to the Regional Director for the Fifteenth Region, for posting by the above-named Employers, said Employers being willing, at all locations in the Port of New Orleans, Louisiana, where notices to their employees are customarily posted.

(c) Notify said Regional Director, in writing, within 10 days from receipt of this Decision and Order, what steps have been taken to comply herewith.

Dated, Washington, D. C., June 30, 1964.

FRANK W. MCCULLOCH,
Chairman,

BOYD LEEDOM,
Member,

JOHN H. FANNING,
Member,

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX.

NOTICE TO ALL EMPLOYEES OF

DELTA STEAMSHIP LINES, INC., BLOOMFIELD STEAMSHIP COMPANY; STATES MARINE AGENCY; T. SMITH AND COMPANY; BUCK KRIEHS AND COMPANY; BEST ELECTRIC COMPANY; and DIXIE MACHINE, METAL AND WELDING WORKS, INC; and of all other persons engaged in commerce or an industry affecting commerce

EMPLOYED IN THE PORT OF NEW ORLEANS, LOUISIANA

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage individuals employed in New Orleans, by Delta Steamship Lines, Inc.; by Bloomfield Steamship Company; by States Marine Agency; by T. Smith and Company; by Best Electric Company; and by Dixie Machine, Metal and Welding Works, Inc.; or by any other person engaged in commerce or an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is to force or require any of the foregoing persons to cease doing business with each other or with any other person.

WE WILL NOT threaten, coerce, or restrain in the Port of New Orleans, the above-named Employers and/or Buck Kriehs and Company or any other person engaged in commerce or an industry affecting com-

merce, where an object thereof is to force or require any of the foregoing employers to cease doing business with each other or with any other person.

NATIONAL MARITIME UNION OF AMERICA,
AFL-CIO
(Organization)

Dated ..... By .....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, T6024 Federal Building (Loyola), 701 Loyola Ave., New Orleans, Louisiana 70113 (Telephone No. 529-2411), if they have any question concerning this notice or compliance with its provisions.

Trial Examiner's Decision.

Statement of the Case.

Upon charges filed by Delta Steamship Lines, Inc., herein Delta, in Case No. 15-CC-189, and by Bloomfield Steamship Company, herein Bloomfield, on June 17 and June 20, 1963, against National Maritime Union of America, AFL-CIO, herein the NMU or the Respondent, the General Counsel issued a consolidated complaint alleging the NMU had violated Section 8(b)(4)(i) and (ii)(B) of the Act. The answer of Respondent denied the commission of unfair labor practices and further averred that the activities of the Respondent were protected by the First and Fourteenth Amendments of the Constitution of the United States and the Constitution of the State of Louisiana.

This proceeding, with the General Counsel and the Respondent represented, was heard before me at New Orleans, Louisiana, on October 14, 1963. Briefs were received from the General Counsel and the Respondent by November 20, 1963.[1]

Upon the entire record in this case and from my observation of the witnesses, I make the following:

Findings of Fact.

I. The business of the Employers.

Delta is a steamship company engaged at New Orleans, Louisiana, and other ports in the United States, in the transportation by ship of passengers and cargo between ports in the United States and ports in foreign countries. Its annual revenue from these operations exceeds $50,000.

Bloomfield is a steamship company engaged at New Orleans, Louisiana, and other ports in the United States in the transportation by ship of passengers and cargo between ports in the United States and ports in foreign countries. Its annual revenue from these operations exceeds $50,000.

I find Delta and Bloomfield engaged in commerce within the meaning of the Act.

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[1] Unless otherwise noted all dates refer to 1963.

II. Labor organization involved.

The NMU is a labor organization within the meaning of Section 2(5) of the Act.

III. The alleged unfair labor practices.

A. *The facts.*

Since Respondent rested at the conclusion of the General Counsel's case, electing to call no witnesses, the facts are not in dispute. Charles Spicer, vice president in charge of operations for Delta, testified that Delta had preferential rights at the Poydras Street wharf owned by the State of Louisiana, and that it loaded and unloaded its ships at this wharf. The loading and unloading was done by members of Locals 1418 and 1419 of the International Longshoremen's Association, herein collectively referred to as the ILA. On June 17 the Delta SS. *Del Valle* arrived at the wharf and longshoremen were ordered to report at 1 p. m. to unload its cargo. At 1 p. m. Spicer testified that two pickets who had reported at the wharf at about 7:30 a. m., commenced picketing with sign which bore the legend:[2]

INFORMATION
PICKETING
MEBA Engineers
Interfere
With Employers
Who Lawfully
Recognize
N. M. U.

The picketing took place at the gangway of the ship and on the wharf itself and continued through another shapeup which had been ordered for 5 p. m. It continued the next day at 8 a. m. with two pickets and the same signs and at 1 p. m. the *Del Valle* left the wharf and proceeded to anchor-

[2] General Counsel's Exhibit No. 3.

age in the river. None of its cargo had been unloaded and none of the longshoremen had worked.

At about 3:40 p. m. the Delta SS. *Del Mar* tied up at the wharf and no pickets appeared.[3] Longshoremen worked discharging mail, passengers and baggage. The next morning, however, the *Del Mar* was picketed at 8 a. m. and no unloading was done and the gangs ordered for 6 p. m. did not even appear at the wharf to work. On June 20 a number of longshoremen appeared and went aboard the *Del Mar* but did not work because of rain and at about 2 p. m. the pickets left.

At the times the picketing took place Delta did not recognize the NMU nor did it have any contracts with the NMU. The NMU made no claim for recognition or a contract and it had no dispute with Delta.

Charles J. Boudreaux, assistant port engineer for Delta at New Orleans, testified that he went abroad the *Del Valle* when it tied up on the 17th to check for necessary repairs. As a result of his inspection he called Buck Kriehs and Company and Best Electric Company and ordered certain repair work to be done aboard the ship. He informed the managers of both companies that the ship was picketed and each company, according to Boudreaux, sent a superintendent to the ship and after they observed the picket line no work was done by either company. Boudreaux also testified that the carpenter foreman and the paint foreman employed by Delta refused to cross the picket line with their men to perform necessary work.

George E. Wieckhoff, vice president of Bloomfield, testified that Bloomfield conducted its loading operations at the Cotton Warehouse wharf utilizing the services of its agents, States Marine Corporation. On June 13 and again on June 15 the Bloomfield SS. *Neva West* tied up at the wharf to load cargo. It returned to the wharf again on June 17 to complete the loading which Wieckhoff estimated would take

[3] There is confusion in the testimony as to the dates and times as to the arrival and departure of the two ships. This confusion, however, does affect the substance of the case.

about 6 hours. Wieckhoff stated that he was informed that there was picketing at the wharf and that the longshoremen (employed by States Marine) would not work and that as a result of this information he called Mr. George, whom he identified as port agent for the NMU, and told him the longshoremen had refused to cross the picket line on the 17th and 18th. Wieckhoff requested that the pickets be removed so the ship could load and George told him that while he had full authority to call off the picket line he had to "go along like this." Wieckhoff talked to George again on June 19 and again George told him he would do nothing, and that the NMU wanted Bloomfield "to get good and mad and make a lot of noise." George then told him to get hold of Paul Hall, President of the Seafarers International Union[4] and have Hall call off the MEBA pickets who were picketing the SS. *Maximus* in Philadelphia.

Harry B. Estes, wharf superintendent of the States Marine Agency, testified that he first saw picketing at the Cotton Warehouse wharf on June 17 when the *Neva West* was docked there. The legend on the picket signs was the same as the legend borne at Delta. Estes testified that he had ordered six longshoremen gangs and 12 carpenters to work on the *Neva West* on the 17th from T. Smith and Company stevedores, and that no work was performed and that again at 4 p. m. he ordered four gangs and 12 carpenters and no work was performed. The forklift operators who work on the wharf and who start work at 8 a. m. did not work until 9:30 a. m. on June 17. Estes testified that the operators gassed their forklifts but refused to go further when they saw the pickets who were at the entrance to the wharf. As to the longshoremen and the carpenters, they were requested for the 18th, 19th and 20th but no work was done until the afternoon of the 20th when the pickets left. Estes at no time made any inquiry as to the purpose of the picketing or as to why it ceased.

Tillis Gauthier, a pipe foreman for Dixie Machine, Metal and Welding Works, Incorporated, testified that on June

[4] Bloomfield had a contract with the SIU; it had none with NMU, nor did the NMU make any request for recognition or a contract.

15 he was sent to the *Neva West* to repair a line. When he arrived (he knew that a picket line had been established) he asked "the man with the picket" if he could go aboard to do repair work and was told he could not. He left and reported to Mr. Steel, Dixie's superintendent who told him they had better not try to do any work. Gauthier later (date unspecified) returned and did the work after the picket line had been withdrawn.

Edward Theodore, Jr., testified that he was the delegate representing Local 854, ILA, which represented the fork-lift drivers at the Cotton Warehouse wharf. When he checked at his office on the morning of June 17 he was told he had a call from his men at Cotton Warehouse and he went to the wharf. The men were outside the wharf because of the pickets and Theodore asked the pickets, who were in the street leading to the wharf, what it was about. Theodore could not remember the response but he did tell the pickets they were at the wrong place. He and one of the pickets then went to a telephone booth where the picket made a call. When the picket came out he told Theodore, "We are not picketing the docks. We are picketing the ships to keep the longshoremen from going on." Theodore then put his men back to work at 10 a. m.

Theodore also testified that while at the wharf he saw a Tom Harris, identified only as with the NMU, who told him that it was only informational picketing and that as soon as the NMU received permission to get on the apron of the wharf the pickets moved to the ship area.

B. *Conclusions.*

The issues presented by this case are familiar:

(a) Did the picketing induce and encourage any individual to strike or refuse to perform services?

(b) Did the picketing threaten, coerce or restrain any employer engaged in commerce?

(c) Was the object of the inducement and encouragement, and the threats, coercion and restraint, the forcing of any person to cease doing business with any other person?

The picket legends did not induce or encourage any individual to refuse to work; they did not publicize any dispute between the NMU and either Delta or Bloomfield. What they did publicize was a dispute between NMU and MEBA. The motive of the picketing, so far as it is revealed by this record (and more fully in the briefs) was retaliatory. MEBA, supported by SIU, was picketing the SS. *Maximus* in Philadelphia (the *Maximus* employed NMU seamen) and it was to protest this picketing that the NMU picketed the Delta and Bloomfield ships at New Orleans. The *primary* object of the picketing was not to cause Delta and Bloomfield to cease doing business with any person or to compel any person to cease doing business with Delta and Bloomfield. The primary object was to force MEBA to cease its picketing of the *Maximus*. The question is whether this for such an objective falls within the interdict of Section 8(b)(4)(B).

In reaching decision two principles must be kept in mind:

(a) A literal construction of Section 8(b)(4) would, as the Supreme Court pointed out in the *General Electric* case,[5] bar all primary picketing.

(b) It is not necessary that the *primary* object of the picketing be the cessation of business between Delta and Bloomfield and other persons but that *an* object of such picketing be the cessation of business.[6]

Although the situation is novel in that no employer is directly involved in the dispute and no demand is made

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[5] *International Union of Electrical, Radio and Machine Workers, AFL-CIO v. N. L. R. B.*, 366 U. S. 667.

[6] *N. L. R. B. v. Denver Building and Construction Trades Council*, 341 U. S. 675.

upon any employer, two Trial Examiners have faced the same dispute and the same conduct and found the Respondent guilty.[7] I do not reach that conclusion. This is a type of case which does not appear to have been within the contemplation of the Congress when it enacted Section 8(b)(4)(B) for it involves no secondary boycott of any goods, products or services as a means to compel action on the part of any employer. The case comes to the Board as one of first impression and the determination will ultimately hinge on the construction given the statute by the Board, i.e., whether it gives generous scope to the language of Section 8(b)(4)(B) in the interests of furthering the policies of the Act, or exercises restraint in the interests of protecting the freedom of persons to engage in conduct not specifically prohibited. In the past the Board has given a rather full scope to the prohibitions of Section 8(b) but a full scope which imposes sweeping restraints on the conduct of labor organizations has not received the sanction of the Supreme Court.[8]

A careful reading of the cases cited in the briefs in this case and in the decisions of Trial Examiners Goldberg and Libbin reveals that none, with one exception, faces a situation at all comparable to that in the instant case. The others are the typical cases where an employer is struck or picketed to compel him to stop using nonunion goods, a secondary employer is picketed to compel him to stop supplying the primary employer or using his goods, or common situs picketing is involved.

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[7] See Trial Examiner Goldberg's decision in Case No. 23-CC-125, dated December 23, 1963, and Trial Examiner Libbin's decision in Case No. 4-CC-262, dated January 10, 1964.

[8] *National Labor Relations Board* v. *News Syndicate Company, Inc.*, 365 U. S. 695; *Local 357, International Brotherhood of Teamsters, etc.*, v. *N. L. R. B.*, 365 U. S. 667; *Local 761, International Union Electrical, Radio and Machine Workers, AFL-CIO*, 366 U. S. 667; *Local 60 United Brotherhood of Carpenters and Joiners of America, AFL-CIO*, 365 U. S. 651; *Local Lodge No. 1424, etc., et al.*, v. *N. L. R. B.*, 362 U. S. 411; *N. L. R. B.* v. *Insurance Agents International Union*, 361 U. S. 477; *Drivers, Chauffeurs and Helpers Local Union No. 639* v. *N. L. R. B.*, 362 U. S. 274.

The exception is *Douds* v. *International Longshoremen's Association*, 224 F. 2d 455 (C. A. 2). In that case there was a struggle for control of the New York piers between the ILA-AFL and the ILA-Independent. One McMahon, a member of the ILA-Independent (the original ILA), resigned and joined the ILA-AFL. Employed at a pier operated by the Moore-McCormack Line, which had a contract with the ILA-Independent, McMahon was discharged and picketed the Moore-McCormack pier in protest. Members of Local 807, Teamsters, refused to make deliveries to the pier because of McMahon's picketing and in retaliation members of the ILA-Independent refused to handle cargo delivered by Local 807 at piers which they worked. There was no dispute between the ILA-Independent and any employer.

Upon application of the Regional Director for the Second Region an injunction was issued in the District Court for the Southern District of New York against the ILA-Independent and eight of its locals.[9] The International, the eight locals and three individuals were fined for disobeying the order and appeal was taken from the convictions to the Second Circuit. In reversing the convictions, Judge Learned Hand, speaking for the Court stated the issue clearly, as follows:

> We shall for the moment assume that whatever was a violation of §8(b)(4)(A), was disobedience of

[9] The pertinent part of the injunction enjoined the defendants from:

> Engaging in, or, by orders, directions, instructions, appeals, or other means, or by permitting any such to remain in existence or effect, inducing or encouraging the employees of members of New York Shipping Association and of other employers to engage in, strikes or concerted refusals in the course of their employment, to use, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform services for their employers, where objects thereof are (1) to force or require members of New York Shipping Association and other employers to cease doing business with trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and (2) to force or require customers of trucking concerns employing members of Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, to cease doing business with said trucking concerns; * * *

the order and address ourselves to whether the refusal was such a violation. It was not, we think, within the three most recent decisions of the Supreme Court construing the Section.[3] In the first place it was not a "secondary boycott" in the usual meaning of that term; for that presupposes a labor dispute between the employees of one employer, with whom another employer has business relations, as a customer, or as the source of his material, or the like. It further presupposes that the employees of the second employer, wishing to make common cause with those of the first, strike, or threaten to strike, against their own employer, unless he will discontinue his relations with the first, by this means putting pressure on the first to come to terms with his own employees. Section 8(b)(4)(A) does indeed go further than that: for in the three decisions that we have cited, the employees were not helping the employees of another employer in a dispute between them and him. Nor had they any dispute with their own employer as to the conditions of work or bargaining representative. On the contrary, their only "object" was to promote the general solidarity of unionism by refusing to work with non-union men, even though these were in a different craft from theirs.

In the case at bar it is true that the "807" drivers were in a different craft from the longshoremen; but the "object" of the "Independent's" refusal to serve their trucks was not to advance the union solidarity, but to move against "807" for taking part in the dispute between itself and "AFL-ILA." If this

[3] *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U. S. 665, 28 LRRM 2105; *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U. S. 675, 28 LRRM 2108; *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 341 U. S. 694, 28 LRRM 2115; *Local 74* v. *National Labor Relations Board*, 341 U. S. 707, 28 LRRM 2121.

was within the statute it means that a union may not advance its own cause in a dispute with another to gain representation, if the step it takes causes a cessation of business between its employer and a third person, or between two third persons. It is one thing to say that such interference is unlawful when its "object" is the promotion of unionism in general and a very different thing to forbid such a sanction as part of the contest for control. We start therefore with the premise that, if the section goes so far, it ought to appear very plainly in the text, and we do not think that it does.

Turning then to the text, we are to ask whether it was an "object" of the "Independent's" refusal to serve the trucks to force the "Association" "to cease doing business with the trucking concerns" or to force "customers" of "the trucking concerns" to "cease doing business" with them. It is indeed true that this was one of the probable, nay perhaps inevitable, consequences of the refusal; but the liability imposed by the section is much more limited than the usual liability for a tort, which extends to any damage that the tortfeasor should reasonably have expected to result from his act. All strikes and "concerted refusals" to work involve some cessation of business; that is the only sanction they can have. When Congress limited the wrong to occasions when the cessation was an "object" to the conduct, it excluded much indeed that the ordinary law of tort would have included. If it had not done so, it would have made nearly all strikes unlawful. The "object" of an action is the concluding state of things that the actor seeks to bring about: that which satisfies his aim. Hence it is a term relating to the whole sequence of steps that he proposes, and it does not apply to those that are only intermediate to it.

Trial Examiner's Decision.

The case at bar is even weaker against the NMU than the case before the Second Circuit. Here the members of the NMU engaged in no refusal to work or to refuse to handle any goods nor did they request the members of any other union or the employees of any employer to refuse to work or handle goods. Their picket signs stated only that MEBA was interfering with employers who lawfully recognized the NMU. I do not know what inducement to action of any kind can be spelled out of such a sign. It is true that the General Counsel states that the record is replete with direct evidence of inducement and encouragement but cites only two unrelated incidents to support this assertion. When the forklift operators refused to cross the picket line at the Cotton Warehouse wharf on June 17 Delegate Theodore visited the scene. When Theodore arrived he told the NMU pickets they were picketing at the wrong place. Theodore and a picket then went to a telephone booth where the picket made a call and then told Theodore they were not picketing the docks but were picketing the ships to keep the longshoremen from going aboard. But this statement is clearly hearsay as to Respondent.[10] There is no showing that the picket was an agent of Respondent or was authorized to state the purpose of the picketing nor was it revealed to whom the call was made. The second incident refers to the visit of Gauthier to the same wharf and his request to go aboard and do repair work on the *Neva West*. Gauthier's testimony was that the picket told him he could not go aboard—that only persons with personal belongings could go aboard. Again, and for the reasons just stated, the testimony is not binding upon the Respondent absent a showing that the picket was authorized to speak for the Respondent.

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[10] See *Los Angeles Building and Construction Trades Council, et al.*, 94 NLRB 415, where the Board held the testimony of two Westinghouse officials that two riggers told them that the Respondents had refused to give them "clearance" to work was clearly hearsay as to the Respondent. The Trial Examiner's findings were reversed on this point. See also *Local 825, International Union of Operating Engineers, AFL-CIO (R. G. Maupi Co., Inc.)*, 135 NLRB 578, 584, 585.

Trial Examiner's Decision.

It is true that the waterfront unions are disciplined unions and that a picket line is a signal which generally will be observed without examination of the picket sign legend. It is probably true the NMU hoped that this would be the case and that the economic distress caused the companies would induce them to appeal to MEBA to cease picketing the *Maximus*. But hope of such incidental effect does not make such picketing unlawful. The Supreme Court in *Local 761, International Union of Electrical Radio and Machine Workers, AFL-CIO* v. *N. L. R. B.*, 386 U. S. 667, 673 (*General Electric*) cited the following language from the District of Columbia Court of Appeals decision in *Salt Dome*[11] with approval:

> It is clear that, when a union pickets an employer with whom it has a dispute, it hopes, even if it does not intend, that all persons will honor the picket line, and that hope encompasses the employees of neutral employers who may in the course of their employment (deliverymen and the like) have to enter the premises.

The Court then went on to say:

> But picketing also induces secondary employees to respect a picket line is not the equivalent of picketing which has an object of inducing those employees to engage in concerted conduct against their employer in order to force him to refuse to deal with the struck employer.[12]

It it true that the situations with which the District Court of Appeals was dealing in *Salt Dome* and the Supreme Court in *General Electric* were dissimilar to the

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[11] *Seafarers International Union, et al.* v. *N. L. R. B.*, 265 F. 2d 585. *Cf. Superior Derrick Corp.* v. *N. L. R. B.*, 273 F. 2d 891, cited in 266 U. S. 667, 677, *supra*, as establishing too mechanical a standard of intent.

[12] The Court was construing former Section 8(b)(4)(A) which referred to a "concerted" refusal. The 1959 amendments struck the word "concerted" from Section 8(b)(4)(i).

instant case in that the former dealt with common situs picketing and the latter with separate gate picketing. Whether picketing of an employer's premises which merely publicizes a dispute between the picketing union and another union constitutes inducement and encouragment of other individuals to cease work presents a novel question. Would, e.g., the Board find a violation of Section 8(b)(4)(B) if the Negro division of a local picketed at an employer's premises to protest that the white division was unfair to it. I think not. It is true that in *Calumet Contractors*[13] the Board held that any form of picketing constitutes inducement and encouragment of their employees who work behind the picket line but in that case the objective of the picketing was to cause the employer to take action—pay prevailing wages. The dispute which provoked the picketing was with the employer, *Calumet*. In any event *Calumet* begs this question since an unlawful objective was found.

Convinced that the reasoning of the Second Circuit in reversing the contempt citations in the ILA-Independent case was sound[14] and persuaded that the language and reasoning of the U. S. Supreme Court and the D. C. Court of Appeals in the *General Electric* and *Salt Dome* cases, distinguishing between the intended objective of the picketing and derivative consequences compel the conclusion that the picketing which took place at the Delta and Bloomfield ships was not unlawful, I find that the picketing which took place here (and I have found that no more than picketing took place) had for its object the cessation of picketing by another union at another port. I do not find that object proscribed by the statute.

Another approach, not urged by Respondent, might be taken. Assume, *arguendo*, MEBA to be an employer with

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[13] *International Hod Carriers, etc., et al.*, 130 NLRB 78.

[14] I cannot accept the argument that stronger standards of evidence were required in the *ILA-Independent* case because it involved contempt citations. In neither that case nor this was the evidence in dispute and the decisions are decisions of law.

whom the NMU had a primary dispute and the members of MEBA to be MEBA employees. The picketing would then clearly meet the standards imposed by the Board in *Moore Drydock Co.*[15] The picketing occurred while MEBA's engineers were present on the ships;[16] the picketing was limited to the area close to the ships, the gangplanks or the sides; the picket sign legends indicated clearly that the dispute was with MEBA alone; MEBA's engineers were engaged in MEBA's normal business on the ships. It would not be necessary to apply the modifications to *Moore Drydock* imposed by the courts in *Salt Dome, supra,* and in *Otis Massey Co.,*[17] and by the Board in its recent *New York Power & Wire Electric Co.,*[18] decision to sustain the conduct of the NMU here.[19]

I prefer, however, to rest this decision on grounds which involve no hypothesis.

Upon the basis of the foregoing findings of fact, I make the following:

Conclusions of Law.

Delta and Bloomfield are employers engaged in commerce within the meaning of the Act.

The NMU is a labor organization within the meaning of Section 2(5) of the Act.

The NMU has not engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

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[15] *Sailor's Union of the Pacific,* 92 NLRB 547.

[16] Ship's engineers are required to stand watches while the ship is in port.

[17] *N. L. R. B.* v. *General Drivers, Warehousemen and Helpers, etc.,* 225 F. 2d 205 (C. A. 5) setting aside 109 NLRB 61.

[18] 144 NLRB No. 100.

[19] There is no evidence that MEBA had offices in New Orleans but it may be presumed it did. Since it is a safe conclusion that no purpose would be served by picketing at MEBA's offices it would make no sense to require the NMU to engage in the folly and conjectural risk of such picketing. Hostility at the waterfront is not to be taken lightly and the ivory tower approach to labor problems must occasionally yield to the realities of specific situations.

Petition to Review and Set Aside a Decision and Order of the National Labor Relations Board.

RECOMMENDATION.

It is recommended that the complaint be dismissed in its entirety.

Dated at Washington, D. C.

JOHN F. FUNKE
JOHN F. FUNKE
Trial Examiner.

Petition to Review and Set Aside a Decision and Order of the National Labor Relations Board.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT:

1. Petitioner, National Maritime Union of America, AFL-CIO, is a labor organization representing unlicensed employees in the maritime industry.

2. National Maritime Union of America, AFL-CIO, maintains an office and transacts business in the District of Columbia.

3. The jurisdiction and venue of this Court arise under Section 10(f) title 29, U. S. C., Section 160(f) of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U. S. C., Section 151 et seq. (hereafter sometimes referred to as the Act).

4. On June 10, 1963, the S/S "*Maximus*", then owned and operated by Cambridge Carriers, Inc., was moored at Pier 84 South in the Port of Philadelphia, where it was to load food and drugs to be taken to Cuba in exchange for prisoners captured during the Bay of Pigs invasion. Cambridge Carriers, Inc. had existing collective bargaining agreements with the National Maritime Union of America,

and the Brotherhood of Marine Officers, an NMU affiliate, covering its unlicensed and licensed personnel, respectively.

5. Shortly after the S/S "*Maximus*" docked in Philadelphia, the Marine Engineers' Beneficial Association (hereafter MEBA) established picket lines at Pier 84 South in Philadelphia and exhibited placards describing Cambridge Carriers, Inc. as unfair to MEBA engineers despite the fact that MEBA did not have and never did have a collective bargaining agreement with Cambridge. As a result of the MEBA picketing, the loading of cargo aboard the S/S "*Maximus*" was stopped.

6. To advise the public in general, and the MEBA membership in particular, of the illegal conduct of the Engineers' Union, the National Maritime Union established informational picket lines at various piers in the Port of New Orleans, Louisiana, where MEBA members were working. The pickets carried placards which read as follows:

INFORMATIONAL
PICKETING
MEBA ENGINEERS
INTERFERE
WITH LAWFULLY
RECOGNIZED
N. M. U.

This informational picketing occurred at the Poydras Street wharf and the Cotton Warehouse wharf in the Port of New Orleans, commencing June 17, 1963. The picketing ended on June 20, 1963, when the MEBA ended its picketing of the S/S "*Maximus*".

7. The Regional Director of the National Labor Relations Board for the Fifteenth Region issued a consolidated complaint, alleging that the picketing by the National Maritime Union was in violation of Section 8(b)(4)(i)(ii)(B) of the Act. Hearings were held before Trial Examiner John F. Funke on October 14, 1963, and on January 23,

Petition to Review and Set Aside a Decision and Order of the National Labor Relations Board.

1964, the Trial Examiner filed his decision, finding that the National Maritime Union had not violated the Act and recommending dismissal of the Complaint. Relying on *Douds* v. *International Longshoremen's Association*, 224 F. 2d 445 (2d Cir. 1955); *Local 761, International Union of Electrical Radio and Machine Workers, AFL-CIO* v. *NLRB*, 366 U. S. 667 (1961); and *Seafarers International Union* v. *NLRB*, 265 F. 2d 585 (1959), the Trial Examiner held that the NMU picketing was for a proper objective and not prohibited by Section 8(b)(4)(i)(ii)(B) of the Act.

8. On appeal, the National Labor Relations Board reversed the decision of the Trial Examiner and found that the NMU picketing was violative of the Act, holding, *inter alia:*

> A. That the Board had jurisdiction over the action, and that the NMU picketing was violative of Section 8(b)(4)(i)(ii)(B) of the Act, even though there was no dispute with a primary employer, thereby refusing to follow the decisions of the Court of Appeals for the Second Circuit in *Douds* v. *International Longshoremen's Association*, 224 F. 2d 455 (1955), and the Court of Appeals for the Fourth Circuit in *NLRB* v. *International Longshoremen's Association, et al.*, F. 2d (1964).
>
> B. That the National Maritime Union picketing, even though peaceful and purely informational, was a "signal" for a general work stoppage at the piers, thereby refusing to follow the ruling of the United States Supreme Court in *NLRB* v. *Fruit and Vegatable Packers and Warehousemen, Local 670*, U. S. 12 L. ed. 2d 129 (1964), that such a broad condemnation of a peaceful picketing has never been adopted by Congress.

9. The Board's Decision and Order is erroneous, unlawful and invalid in that:

Petition to Review and Set Aside a Decision and Order of the National Labor Relations Board.

A. It assumes jurisdiction over conduct which does not relate to a labor dispute as defined in Section 2(9) of the Act.

B. It is in violation of the First Amendment of the Constitution of the United States, which protects the right to freedom of speech and expression.

C. It is in conflict with the decisions of the Supreme Court of the United States and various courts of appeals defining the scope of Section 8(b)(4)(i)(ii)(B) of the Act.

WHEREFORE, petitioner prays that a certified copy of this petition be served upon the National Labor Relations Board requiring the Board to certify to this Court, a transcript of the record in these proceedings, including the pleadings, oral testimony and exhibits introduced at the hearings, the report and order of the Trial Examiner, and the findings, conclusions, decision and order of the Board, and that this Court should thereafter review and set aside the Order of the Board and direct dismissal of the consolidated complaint, and grant petitioner such other and further relief as may be just and proper in the premises.

ABRAHAM E. FREEDMAN,
JOSEPH WEINER,
CHARLES SOVEL

By JOSEPH WEINER

Of Counsel:

MANDELL & WEIGHT,
South Coast Building,
Houston 2, Texas.

Answer of the National Labor Relations Board to Petition to Review and Set Aside Its Order, and Cross-Application for Enforcement Thereof.

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C. Sec. 151, *et seq.*), herein called the Act, files this answer to the petition to review and set aside its order issued against petitioners on June 30, 1964, and its application for enforcement of that order.

1. The Board admits the allegation of paragraph 1 of said petition.

2. The Board admits the allegations of paragraphs 2 and 3 of said petition, setting forth the grounds upon which jurisdiction and venue are based.

3. In answer to paragraphs 4, 5, 6, 7, and 8 of said petition, the Board prays that reference be made to the certified transcript of the record to be filed herein for a full and exact statement of the pleadings, testimony and evidence, findings of fact and conclusions of law, order of the Board, and other proceeding in this matter.

4. The Board denies each contention and allegation of paragraph 9 of said petition, setting forth the grounds upon which petitioners seek relief.

5. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were in all respects valid and proper under the Act.

6. Further answering, the Board, pursuant to Section 10(e) and (f) of the Act, and Rule 38(e) of the Rules of this Court, respectfully requests this Court to enforce its order issued against petitioners on June 30, 1964, in proceedings designated on the record of the Board as Cases Nos. 15-CC-189 and 15-CC-190, entitled *National Maritime Union of America, AFL-CIO* and *Delta Steamship Lines,*

Answer of the National Labor Relations Board to Petition to Review and Set Aside Its Order, and Cross-Application for Enforcement Thereof.

Inc.; and *National Maritime Union of America, AFL-CIO* and *Bloomfield Steamship Company.*

In support of this cross-application for enforcement of its order, the Board respectfully shows:

(A) This Court had jurisdiction of this cross-application by order of Section 10(e) and (f) of the Act.

(B) Pursuant to Section 10(e) of the Act, the Board will certify and file with this Court a transcript of the record of the proceedings upon which the Board's order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this answer and cross-application for enforcement, and of the transcript, to be served upon petitioner; and that this Court take jurisdiction of the proceeding and of the question determined therein; and make and enter a decree enforcing in whole the order of the Board.

MARCEL MALLET-PREVOST
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.
Aug 11 1964

Stipulation and Order.

Before:

BAZELON, Chief Judge,
in Chambers.

PREHEARING ORDER.

Counsel for the parties in the above-entitled case having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this court, and the stipulation having been considered, the stipulation is hereby approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

Dated: September 14, 1964.

Prehearing Conference Stipulation.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18789

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT:

Pursuant to Rule 38(k) of the Rules of this Court, the parties in the above-entitled case hereby stipulate that the issues involved are as follows:

1. Was the Board warranted in finding that there was a labor dispute in this case?

2. (a) Is the National Labor Relations Act applicable in the absence of a labor dispute?

(b) Can an unfair labor practice exist in absence of a labor dispute?

3. Do the Board's findings disclose a violation of Section 8(b)(4)(i)(ii)(B) of the Act?

Prehearing Conference Stipulation.

4. Is there substantial evidence on the whole record to support the Board's holding that petitioner violated Section 8(b)(4)(i)(ii)(B) of the Act?

5. Does the Board's holding that petitioner violated Section 8(b)(4)(i)(ii)(B) of the Act infringe petitioner's right of free speech as guaranteed by the First Amendment of the Constitution?

MARCEL MALLET-PREVOST
Assistant General Counsel
National Labor Relations Board

ABRAHAM E. FREEDMAN
CHARLES SOVEL
A. FRED FREEDMAN
Counsel for Petitioner

Excerpts from Testimony.

(1) BEFORE THE

NATIONAL LABOR RELATIONS BOARDS

FIFTEENTH REGION.

IN THE MATTER *of* NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *and* DELTA STEAMSHIP LINES, INC., NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *and* BLOOMFIELD STEAMSHIP COMPANY.	Case No. 15-CC-189 Case No. 15-CC-190

Room T8003, Federal Building
701 Loyola Avenue,
New Orleans, Louisiana
Monday, October 14, 1963

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 a. m., o'clock.

Before:

JOHN FUNK, Trial Examiner.

Appearances:

DAVID L. MCCOMB, Room T6024, Federal Building, New Orleans, Louisiana, Counsel for General Counsel.

HERMAN WRIGHT and BENJAMIN SMITH, (Mandell and Wright) 707 South Coast Building, Houston, Texas, (Smith and Waltzer) 1006 Baronne Building, 305 Baronne Street, New Orleans, on behalf of Respondent.

(6) CHARLES L. SPICER a witness called by and on behalf of General Counsel, having been duly sworn, was examined and testified as follows:

The Witness: My name is Charles L. Spicer, Vice President, Operations, Delta Steamship Lines. 1405 Hibernia Bank Building, New Orleans, Louisiana.

Direct examination by Mr. McComb:

Q. Captain Spicer, how long have you held your present position? A. Approximately 6 years.

Q. And what are your duties in that position? A. I am in charge of the operations of the vessels owned and operated by Delta Steamship Lines.

(7) Q. And is Delta Steamship Lines a corporation? A. Yes.

Q. What state is it incorporated in? A. Louisiana.

Q. What business is Delta primarily engaged in? A. In the steamship business.

Q. What routes does it service? A. We have two routes. One from the U. S. Gulf to the East Coast of South America, and one from the U. S. Gulf to the West Coast of Africa.

Q. What flag do your vessels fly? A. U. S. flags.

Q. How much gross annual revenue do you get from this business? A. I would say in excess of one million dollars gross.

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By Mr. McComb:

Q. Now, where does Delta carry on its operations in New Orleans? A. At Poydras Street Wharf.

• • • • • •

By Mr. McComb:

(11) Q. Now, what operations are carried on by Delta at the Poydras Street Wharf? A. We receive and deliver

freight and we load and discharge vessels at the Poydras Street Wharf.

Q. Whose employees perform those operations? (12) A. Well, for the discharging and loading of ships Delta Lines has their own employees. For unloading cars, that is done by outside contractors.

Q. Now, with regard to the loading and unloading of ships——

Trial Examiner: You mean freight cars?
The Witness: Yes.
Trial Examiner: Do trucks unload there, too?
The Witness: Yes.

By Mr. McComb:

Q. Whose employees load and unload trucks? A. Most of the time it's the trucking people themselves.

Trial Examiner: Their drivers and their helpers?
The Witness: That's right.

By Mr. McComb:

Q. Now, with regard to the Delta employees who load and unload vessels, are they regular employees who report daily, or how do you get them? A. Part of them report daily and part of them only report when we have ships working.

Q. I see.

Trial Examiner: Do they work out of a shape-up or are they notified?

The Witness: No. They work out of a shape-up, the people who load and unload the ships.

By Mr. McComb:

Q. Do those people belong to the union? A. Yes.

Q. Do you know which union? (13) A. The ones that load and discharge the ships belong to ILA 1418 and 1419.

Trial Examiner: Do you have a contract with that union?

The Witness: Yes.

By Mr. McComb:

Q. Is ILA 1418 and 1419 the only unions in New Orleans whose members load and unload general cargo, as far as you know? A. I wouldn't say the only members. They are for the steamship companies as far as I know. I don't know of any others.

Q. Now, you were in your present position as of June of this year? A. That's right.

Q. Was some picketing conducted around Poydras Street Wharf around June of this year? A. Yes.

Q. Do you remember when? A. On June the 17th, 18th and 19th.

Q. Okay. Now, it began on the 17th? A. Yes.

Q. Now, with regard to the 17th, were any longshore gangs ordered for cargo work on that day? A. For 1:00 p. m. start.

Trial Examiner: On which day?

The Witness: The 17th.

By Mr. McComb:

Q. What work were they ordered for? (14) A. The work to discharge on the *Del Valle.*

Trial Examiner: Which is one of your ships?

The Witness: That's right.

By Mr. McComb:

Q. How do you spell *Del Valle?* A. *D-e-l V-a-l-l-e.*

Q. How many gangs were ordered? A. Seven.

Q. Did they work? A. No.

Q. Why not? A. They wouldn't cross the picket lines at the foot of the gangway.

Mr. Wright: If it please the Examiner, it is obviously hearsay.

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By Mr. McComb:

Q. Captain Spicer, did these longshoremen report? (15) A. Yes.

Q. Did you see them? A. Yes.

Trial Examiner: You know of your own knowledge that they did not work?

The Witness: Yes.

By Mr. McComb:

Q. Did you see the picketing on that day? A. Yes.

Q. When did you first see it? A. I first saw two men getting out of a car at the entrance of Poydras Street approximately at 7:30 a. m.

Q. Now, is that at the point that you marked with a capital A on General Counsel's 2? A. Yes.

Q. And you saw two men getting out of a car with a sign? A. They were pulling signs out of the back of their car.

Q. I see. Did you read the sign? A. Not at that time.

Q. Did you see how many signs there were? A. Just two.

Trial Examiner: Two men and two signs?

The Witness: That's correct.

By Mr. McComb:

Q. Were there any Delta vessels at the Poydras Street Wharf at that time? A. Not at that time.

(16) Trial Examiner: Just a minute. You say you saw these men getting out of the car and taking these signs out of the car. What did they do after they got out of the car? If you saw them after that?

The Witness: I didn't stop. I walked right on through.

Trial Examiner: Thank you.

By Mr. McComb:

Q. Did the *Del Valle* arrive later in the day? Is that right? A. Yes. She arrived just before—in the forenoon. Approximately at 10:40 a. m.

Mr. Wright: That's when the ship arrived?

Trial Examiner: Yes.

By Mr. McComb:

Q. Was there any picketing done that morning? A. I never seen any pickets in front of the ships until the 1.00 o'clock shape up.

Q. Did you see any picketing anywhere? A. Only what I said previously.

Q. I see. Now, at the 1:00 o'clock shape up you saw picketing? A. Two. Two men.

Q. Where? A. At the foot of the gangway on the outside apron.

Trial Examiner: This would be on Poydras Street?

The Witness: At Poydras Street.

(17) By Mr. McComb:

Q. Now, did you read the sign? A. Yes.

Q. What did they say? A. Information picketing. M. E. B. A. Engineers interferes with employers lawfully recognizing N. M. U.

Q. All right.

Trial Examiner: Do you have a contract with MEBA?

The Witness: Yes.

By Mr. McComb:

Q. Now, did the pickets remain in that position throughout the day? A. Yes. They were walking backward and forward in front of the gangway.

Q. In front of the gangway? A. Yes.

Q. All right.

Trial Examiner: I don't understand this in front of the gangway. Where would they—where would the gangway be?

The Witness: On the Poydras Street Wharf.

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(19) By Mr. McComb:

Q. Now, still with regard to the 17th, did you order any more longshoremen that day? A. Yeah, we ordered at—we ordered a 5:00 o'clock shape-up for 6:00 p. m. start.

Q. And was the picketing still taking place at that time? A. Yes.

Q. Did any of the longshoremen appear?

Mr. Wright: If it please the Examiner, I think we ought to get this down narrower than what he is doing now.

Trial Examiner: Maybe he can't do it by this witness.

Mr. Wright: Well, if the witness is going to testify that the picketing is going on, surely he knows——

Trial Examiner: Yes, but I don't know if he saw the men appear or not, at this moment.

(20) I assume that you were in the vicinity of the wharf all day on this day. You testified now to the picketing continuing at 5:00 o'clock. Did you see it at that time?

The Witness: I seen it at 5:00 o'clock, yes.

Trial Examiner: And did you see the longshoremen who were ordered to appear?

The Witness: They appeared right around there, right around 5:30 or quarter of 6:00.

Trial Examiner: You saw it?

The Witness: Yes.

By Mr. McComb:

Q. Was any work done by the longshoremen? A. No.

Q. Was any cargo work done on the *Del Valle* at all on the 17th of June? A. No. None whatever.

Q. Now, I want to direct your attention to the following day, the 18th of June, and ask you if the *Del Valle* was still at the Poydras Street Wharf? A. That is correct.

Q. Did you see picketing on that day? A. In the morning, yes.

Q. When did you first see it? That morning? A. About 8:00 o'clock in the morning.

Q. Where? A. At the foot of the gangway, the same place.

(21) Q. The same place. Did you see the signs that day? A. Yes.

Q. Were they different or were they the same? A. Same signs.

Q. How many pickets were there? A. Two.

Q. Now, did you order any longshore gangs for that morning? A. We ordered longshore gangs.

Q. For what time? A. For an 8:00 o'clock start.

Q. Did any of them appear? A. We got around three gangs, yes, that appeared.

Q. Did any of them work? A. No.

Q. Did the *Del Valle* remain at the Poydras Street Wharf all day that day? A. No, she left Poydras Street right around 1:00 o'clock and went to an anchorage point.

Q. All right.

Trial Examiner: To where?

The Witness: Anchorage, at the general anchorage.

By Mr. McComb:

Q. That's out in the middle of the river isn't it? A. Yes. Down below the shipyards.

Q. Were there any other Delta vessels at the Poydras Street (22) Wharf that day? A. Yes. The *Del Mar* arrived at approximately 3:40 p. m. on the 18th.

Trial Examiner: That's *D-e-l M-a-r*, I assume, for the benefit of the reporter?

By Mr. McComb:

Q. That's two words? A. Yes.

Q. Did the *Del Mar* have any work to be done on it on the 18th? A. Yes.

Q. What sort of work? A. We ordered gangs and the gangs showed up and we worked discharging mail, passengers and baggage.

Q. Was there any picketing being done? A. None.

Q. All right. Now, what about the 19th? Was the *Del Mar* still there? A. The *Del Mar* was still there.

Q. Was there any work to be done on her as far as loading or unloading? A. None whatever.

Q. No work to be done on the 19th? A. There was work to be done, but no work done.

Q. What sort of work was there to be done? A. Loading and discharging.

(23) Q. Were any longshoremen ordered for that purpose? A. Yes.

Q. For what time? A. For 8:00 o'clock start.

Q. How many? A. Six gangs.

Q. Did they appear? A. Yes.

Q. And you say there was no work done? A. No work.

Q. Did you see picketing on that morning? A. Yes.

Q. When did you first see it? A. 8:00 o'clock in the morning.

Q. Where? A. At the foot of the gangway on the *Del Mar*.

Q. The signs were the same? A. The same thing

Q. Did you order any work done for later? Later in that day? A. Yes, we ordered gangs back for that night but no one showed up.

Q. No one showed up? A. (Nodded negatively.)

Q. Was there picketing? (24) A. Yes.

Trial Examiner: At this time the employees did not even appear at the wharf?

The Witness: No.

By Mr. McComb:

Q. I don't remember whether you answered was there picketing or not?

Trial Examiner: Yes, there was picketing.

The Witness: Yes.

By Mr. McComb:

Q. At the same place? A. At the foot of the gangway, of the *Del Mar.*

Q. The same signs? A. Yes.

Q. Now, what happened on the 20th? Were the pickets there on the 20th? A. Yes.

Q. What time did you see them on the 20th? A. They were there at 8:00 o'clock in the morning.

Q. Did you order any longshore gangs to work on the *Del Mar* on the 20th? A. Yes.

Q. How many? A. We ordered six.

Q. Did they appear? A. I wouldn't say that the full six gangs appeared, but a number of men appeared, yes.

(25) Q. Did any of them work? A. They went aboard.

Q. They did? A. Yes.

Q. Did they work? A. No, they didn't work on account of rain.

Q. Did the picketing continue throughout the day that day? A. Up until about 2:00 o'clock. I believe the pickets was removed.

Q. Prior to the time they were removed, was there any cargo work done by the longshoremen? A. Prior? No.

Q. Now, prior to the beginning of the picketing or at any time during the picketing, did anyone from the National Maritime Union contact you to tell you that there would be picketing or to inform you as to the purpose? A. No.

Q. Does Delta have any employees who are represented by the National Maritime Union? A. No.

Q. Did you have in June? A. No.

Q. Does Delta have any labor contracts with the NMU? A. No.

Q. Have you had? (26) A. No.

Q. To your knowledge, has the NMU ever requested Delta to recognize it? A. To the best of my knowledge, no.

Q. Has NMU ever requested that Delta bargain with them for any reason? A. To my knowledge, no.

Q. Has Delta ever had a labor dispute with NMU, that you know of? A. No.

Mr. McComb: I tender the witness.

Trial Examiner: I would like for General Counsel to enlighten me a little as to the case. You said Delta is—if Delta wasn't the primary employer in this dispute, who was?

Mr. McComb: It's very difficult to tell, Mr. Examiner.

Trial Examiner: Well, who do they want Delta to stop doing business with?

Mr. McComb: Everyone. They want Delta—well, as we have alleged in the complaint.

Trial Examiner: I know. I read the complaint.

Mr. McComb: This picketing was done with an object of forcing or requiring Delta to cease doing business with persons with whom it normally does business. To practically shut them down.

Trial Examiner: Well, don't you have to have a primary (27) employer? I may understand the case when it's completed.

Mr. McComb: Yes, sir. I think it will develop a little more.

Trial Examiner: It is a phenomenon, I must confess.

Cross examination by Mr. Wright:

Q. So that we may clearly understand this matter, your company has no relationship with the NMU at all, does it? A. No.

Q. There was nothing on any picket sign that you saw that indicated that National Maritime Union had any kind of dispute with your company, was there? A. No.

Q. As a matter of fact, the sign clearly indicated that the dispute which the NMU had was with the Marine Engineers Beneficial Association. A. It said information picketing.

Q. About the MEBA. They weren't trying to inform anybody about anything your company was doing. The signs didn't say anything about that, did they? A. No.

Trial Examiner: Could I have the wording of that sign again to refresh my recollection?

Mr. Wright: Informational picketing, MEBA engineers interfere with employers who lawfully recognize NMU. That's (28) exactly what the sign said, wasn't it?

The Witness: (Nodded affirmatively.)

By Mr. Wright:

Q. Nothing on the sign said, or nothing happened to indicate that the NMU had any kind of a dispute with you personally? A. No, it did not.

Q. With your company? A. (Nodded negatively.)

Q. And during the course of the picketing at no time did the NMU ask you to do anything? A. No.

Q. Now, then, let's turn to these ships. The *Del Valle* was the first one in of your ships? A. That's right.

Q. She came in on the 17th of June about noon time? A. Right around, just before noon, yes.

Q. Now, you say you had ordered some gangs for 1:00 o'clock? A. That is correct.

Q. You say the gangs showed up but they didn't go to work? A. That is right.

Q. Now, then, did I understand you to say that you ordered gangs again for that night for that ship? A. We ordered gangs for 1800—I mean for 6:00 p. m., rather.

Trial Examiner: To report at 5:00?

The Witness: We ordered them at 5:00.

(29) Trial Examiner: I understand, yes.

By Mr. Wright:

Q. Now, at this time, did any gangs show up? A. Yes.

Q. They actually showed up but they did not work? A. That's correct.

Trial Examiner: And at both of these times, at 1:00 and 5:00 p. m., the two pickets were at the gangplank?

The Witness: That is correct.

By Mr. Wright:

Q. Now, then, you didn't order any other gangs that day except on these two occasions? A. That is correct.

Q. For 1:00 and for 6:00. Now, the following day, the 19th, you ordered some gangs but none showed up at all? A. No. They did show up that morning but they didn't show up the morning after that.

Q. On the 20th, you mean? A. I ordered gangs for the 19th for the *Del Valle* that morning, and they did show up, but they didn't go aboard.

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By Mr. Wright:

Q. On the 18th you ordered gangs for the morning?

(30) A. That is right.

Charles L. Spicer, for General Counsel—Cross.

Q. And you say some gangs showed up but they did not work? A. That's right.

Q. Now, then, you didn't order any more gangs that day for the ship, did you? A. For the *Del Valle*? No. Because she shifted.

Q. That's right. She left her berth and went out into the stream. A. That's right.

Q. So that no work could be done on her in any event during that period of time? A. Yes.

Q. Now, you brought her back in to dock on the 19th? A. That's right.

Q. And she docked about 9:00 o'clock that morning? A. No. She docked a little before 8:00.

Q. A little before 8:00? A. Yes. About 7:45.

Q. Now, you had ordered gangs for that day? A. Yes.

Q. And those other gangs, you say, didn't show up? A. No. They didn't show up that night.

Q. They showed up that morning?

Trial Examiner: In the morning.

By Mr. Wright:

Q. But they did not work. (31) A. No.

Q. And you ordered gangs that night and they didn't show up? A. That's right.

Q. Now, I take it that you had no conversation with the men who were there in the gang? A. I did not.

Q. Did you make any attempt to contact the National Maritime Union? A. I did not.

Q. Did you contact the MEBA? A. No.

Q. Let me ask you this, sir. In your contract with the longshoremen, you've got a provision with respect to rain? A. That's right.

Q. In the event you have a gang at work, and say they just start to work, and it begins to rain, they close up immediately, don't they? A. Yes.

Q. Close up the hatches? A. That's right.

Q. As a matter of fact, your contract with the longshoremen, it says the men are not required to work in the rain? A. That's right.

Q. It is also true, isn't it, that if you call them out and (32) it begins to rain before they go to work, you still have to pay them for two hours? A. If you ask them to report to the ship, yes.

Q. That's what I said, and if they are on the ships and have been there 15 or 20 minutes and it starts to rain, you've still got to pay them 2 hours? A. That's right.

Q. So that as a general proposition for good business reasons you are very careful about ordering gangs when the weather is likely to be rainy? A. It all depends on how big a hurry you are in for the ship.

Q. No matter how big a hurry you are in, you still can't make the longshoremen work in the rain, can you? A. That's right.

Q. All right. Now, let's get back where we started from. The fact is that for good business reasons you are careful about ordering gangs if it looks like it's going to rain? A. Yes, I'd say so.

Q. Did it rain on the 17th? A. To my knowledge, no.

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By Mr. Wright:

Q. Did it rain on June 18th? A. Yes. We had intermittent squalls.

(33) Q. All day long, didn't you?

Trial Examiner: Did you have a squall or was it raining at 8:00 o'clock in the morning on that day, or don't you remember?

The Witness: I don't recall.

By Mr. Wright:

Q. Well, as a practical matter, sir, on the 17th it was raining off and on most of the day, wasn't it, sir? A. It was intermittent squalls.

Q. All day long? A. Intermittent squalls.

Q. The same thing was true a good part of the day of the 18th, wasn't it? A. Yes.

Q. And it was also true almost all day long on the 19th, isn't that true? A. Well, we worked some on the 19th on the *Del Valle* discharging baggage.

Q. Well, I understand you didn't have any problem there. You didn't have any pickets, you didn't have nothing, and you do unload the passengers' baggage rain or shine, don't you? A. No.

Q. You don't? A. No. Not if it's raining, we don't.

Q. What does the passenger do? (34) A. Well, we just have to wait.

Q. Well, aside from the hours that you spent unloading the baggage, it was raining substantially all day long, wasn't it? A. Yes. I'd say up until about 6:30 that night.

Q. Right. As a matter of fact, it was true up until around about 7:00 or 8:00 o'clock, wasn't it? A. No. I worked the *Del Mar* that day from 6:30 on through to midnight.

Q. How about the 20th? It rained nearly all day long? A. That's correct.

Q. How about—well, as a practical matter you had weather problems that were more substantial than your picketing problems, didn't you? A. I wouldn't say they were more substantial.

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(35) By Mr. Wright:

Q. Now, then, your other vessel was the *Del Mar*, is that correct? A. Yes.

Q. Now, the *Del Mar* came in on the 18th about what time? A. Around 3:40 in the afternoon.

Q. Now, you had no pickets on the *Del Mar* when she came in? A. None whatever.

Q. You discharged your baggage, you discharged the mail without problems. The only problem was with the rain? A. Very little of that.

Q. I say, aside from your problems with the rains you had no interference that day? A. None. That's right.

Trial Examiner: Were these two ships ever at the moor for the same time?

The Witness: On the next day, yes.

Trial Examiner: The 19th?

The Witness: Yes.

Trial Examiner: But when the *Del Mar* came in—what was the name of that first ship again?

Mr. McComb: *Del Valle.*

By Mr. Wright:

Q. Now, the first time that any pickets appeared at the *Del Mar* was when? A. 8:00 o'clock on the 19th. The first that I saw.

(36) Q. Now, these pickets' signs read exactly like the one we just described? A. Yes.

Q. Nothing about those signs to indicate that there was any dispute or argument with your company? A. No.

Q. Nobody from the union came to you to work out any kind of problems? A. No.

Q. Now, then, on the 20th you had longshoremen that came aboard the *Del Mar,* did you not? A. Yes.

Q. This is notwithstanding that there were still some pickets out there? A. That's true.

Q. And the pickets had the same signs we have discussed before? A. Yes.

Q. And people went aboard your ship and the only reason they didn't work was because of rain? A. That is true.

Q. And by around 2:00 o'clock the pickets were no longer there? A. Right around that time, yes.

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(37) CHARLES J. BOUDREAUX, a witness called by and on behalf of General Counsel, having been duly sworn, was examined and testified as follows:

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(38) *Direct examination by Mr. McComb:*

Q. What is your position, Mr. Boudreaux? A. I am employed by Delta Lines as assistant port engineer.

Q. How long have you held that position? A. Since 1956, August.

Q. What are your duties in that job? A. As assistant port engineer it is my duty to board the ship on arrival, go over the requisitions for repairs from the various departments.

Trial Examiner: You mean after it is tied up?

The Witness: After it's tied up. Pick up the repair list, scan the list and see what has to be done and either negotiate—write a specification and either negotiate it or bid the work.

Trial Examiner: Do you usually do your own repair work? Minor repairs?

The Witness: Only the carpenter work and the painting.

Trial Examiner: The rest is contracted out to shipyards?

The Witness: Shipyards and repair shops.

By Mr. McComb:

Q. Now, I want to direct your attention to June 17th when the *Del Valle* came in, and ask if you went aboard the *Del Valle*? A. Yes, I did.

(39) Q. Did the *Del Valle* need any repairs? A. Yes.

Q. What did you do about it? A. Well, after looking at the repair list to determine what had do be done, I went back ashore to call up the contractors and award the repair specifications to Buck Kriehs and Company. Also, Best Electric Company.

Trial Examiner: What electric?
The Witness: B-e-s-t.

By Mr. McComb:

Q. Now, what was the nature of the repair work that you ordered done by Buck Kriehs? A. He handles boilermaker work, machinist work, pipefitter work and repairs of that nature.

Q. And what was Best Electric to do? A. Electrical work.

Q. And you ordered this work done? A. Yes.

Q. Was it done? A. No.

Q. Do you know why not?

Mr. Wright: Just a moment——

Trial Examiner: He can testify if he knows of his own knowledge. Otherwise, it is not competent evidence.

The Witness: At this date after contacting the general manager of Buck Kriehs and Company and the general manager (40) for Best Electric Company, I told them there was an informational picket sign up. To find out if we could carry out this work, and they in turn sent one of their superintendents out to the river and he saw the pickets, the picket signs, and the general manager for Buck Kriehs and Company called me back and told me that he could not supply the men as long as there was a picket line up.

By Mr. McComb:

Q. That was the general manager for who? A. Buck Kriehs and Company, Mr. Sal Liberto.

Q. Now, what about Best Electric? Was that work done? A. Best Electric's shop superintendent came out to the ship to pick up an armature that had to be repaired and he approached the gangplank and observed the picket line and called up his business agent and they told him not to cross it. So we were unable to send the armature ashore.

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By Mr. McComb:

Q. Now, does Delta have its own—I believe you testified that you have some shore paint gang or something like that. A. Yes. We employ a painter foreman, Leo Bienvenue. A carpenter foreman, Mr. Tillman.

Q. Was there any work for them to do? (41) A. There was work aboard the ship but they were unable to carry out the work.

Q. How do you know that? A. Well, the picket line was at the gangway. The carpenter foreman and the paint foreman contacted their business agents and came back and told me personally that they could not go aboard.

Q. All right. A. They could not cross the picket line.

Q. Now, you heard—strike that.

Let me back up just a minute. With regard to the work that you ordered done by Buck Kriehs and which was not done, do you know approximately how many workmen that would have involved? A. Well, I would say between 30 and 40.

Q. About how many men would have been involved in the work of Best Electric? A. Possibly 6 or 7.

Q. And how about your paint gang? A. 8 to 10. No. I'm sorry. In the paint? About 6. The carpenter gang would be about 8 or 10.

Q. Now, you heard some testimony here a while ago, did you not about longshoremen not working when it rains? A. That is true.

Q. Now, can you tell me, if you know, when longshoremen are (42) ordered for cargo work on a vessel and they report and it rains and they have to quit work, does that mean they just take off for the day, or do they go back to work when the rain stops?

Mr. Wright: I suggest, if it please the Examiner, that the counsel not lead.

Trial Examiner: I think the question was leading. The question has been asked now, and as usual, when

a leading question is asked the damage has been done. I suggest, though, that you refrain from leading the witness because it does affect the credibility for any findings I may have to make.

The Witness: Well, the stevedores report for work and they start to work, then you have a shower. All right. You close up. The shower passes. You go back to work. Now, this may happen two or three times a day or it may happen not at all. The New Orleans weather is very erratic, but continual rain in New Orleans—you have very few continual day rains.

Trial Examiner: It's not too different from a ball game, is it?

The Witness: That's right. Now, the repair craftsmen——

Trial Examiner: Machinists can work, they are working down in the engine room?

The Witness: Yes. Down in the hold. The rain doesn't affect us at all.

By Mr. McComb:

Q. All right.

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(43) *Cross examination by Mr. Wright:*

Q. Mr. Boudreaux, with respect to the metal crafts, all you really know about the matter is that you called them and awarded them some work. They sent a superintendent out who saw the picket lines and told you he couldn't perform the work? A. That's right.

Q. Now, what he did or said or anything else, you don't know? A. Well, I know this. We didn't get the men.

Q. You didn't answer that. My question is, you didn't know of your own knowledge what if anything the superintendent did except look and see the picket lines and tell you he couldn't do the work? A. Well, counsel, we do business——

Trial Examiner: Would you answer that question? It can be answered very easily with a yes or no. That is all you know, isn't it? Never mind your experience or what you assume to be the facts.

The Witness: Yes.

By Mr. Wright:

Q. And the same thing with respect to the Best Electric? A. His superintendent arrived at the ship to pick up the armature. He went aboard but he did not pick up the armature.

(44) Q. Well, I say to you again, sir, this is exactly the same situation that exists with respect to— A. No, I think—because Buck didn't do any work. This man came to the ship to pick up an electrical armature for repairs and he did not get it.

Q. Well, sir, I'm trying to find out what you know about it. Just listen to my question. The fact is all you know about it is the man came down there, he saw the picket line and he said he couldn't do it? A. Yes.

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(45) By Mr. Wright:

Q. And with respect to the carpenter foreman and your paint foreman? The only thing you know about this is that you had work for them. They called their union hall. They came back and told you they couldn't go aboard. A. That is correct.

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GERARD E. WIECKHOFF, a witness called by and on behalf of General Counsel, having been duly sworn, was examined and testified as follows:

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(46) Q. All right. And what is your occupation, Mr. Wieckhoff? A. I am employed by the Bloomfield Steamship Company, Vice President in charge of the New Orleans district operations.

George E. Wieckhoff, for General Counsel—Direct.

Q. How long have you been in this capacity? A. Since 1954.

Q. Is Bloomfield Steamship Company a corporation? A. Yes.

Q. Where? Of what state? A. State of Delaware.

Q. Where is its principal office? A. Principal office is in Houston, Texas.

Q. What business is Bloomfield primarily engaged in? A. In the steamship business as common carrier and foreign commerce.

Q. What routes does it service? A. It serves all ports in the range of U. S. Gulf of Mexico and the north continent of Europe.

Q. What flag does it fly? A. U. S. flag.

(47) Q. And what is the gross annual revenue from this business, approximately? A. Oh, substantially, I would say in excess of $100,000.

Q. And do Bloomfield vessels use any one particular wharf in the port of New Orleans A. No. We use several, however, we have one general cargo wharf that we use for every ship.

Q. What wharf is that A. That is a company called The Cotton Warehouse.

Q. Cotton Warehouse Wharf? A. Yes.

Q. Does Bloomfield do its own wharf work? A. No. We employ the facilities of the—of our berth agents, States Marine Corporation.

Q. All right, sir. You say your berth agent. Describe your arrangement with States Marine. A. It is an arrangement under which the States Marine Lines has authorization to handle our freight traffic, which includes the solicitation and representation, the booking, solicitation and booking of freight, assembling of cargo on the wharf and arranging for the loading and discharging of persons.

Q. How many vessels does Bloomfield have? A. Four.

Q. What are their names? A. The names of the vessels are the *Lucille Bloomfield,* (48) *Alice Brown, Margaret Brown* and the *Neva West.*

Q. Was the *Neva West* in the port of New Orleans in June of this year? A. Yes.

Q. At what wharf? A. At the Cotton Warehouse sections 5, 6.

Q. Do you recall when? In June. A. Yes. She was there on June 13 and again on June 15 and from there on.

Trial Examiner: When did she sail?

The Witness: She sailed on June 21.

By Mr. McComb:

Q. Now, what was it to do at the Cotton Wharehouse Wharf? A. It was to complete cargo, general cargo loading and then take on military cargo.

Trial Examiner: Did it come in on the 13th?

The Witness: Yes, it loaded on the 13th and shifted to another wharf and then came back again to the Cotton Warehouse to complete loading. These things have to happen sometimes, two or three times.

Trial Examiner: Yes, I understand.

By Mr. McComb:

Q. Now, after the shift, when was it completed loading at the Cotton Warehouse? A. We were supposed to complete loading on Monday, the 17th.

Q. Do you know, roughly, how many hours work that would (49) have involved? A. We had estimated approximately 6 hours.

Q. Was it accomplished at that time? A. No, it was not.

Trial Examiner: Do you know why?

The Witness: Because we didn't have any longshoremen work the ship.

By Mr. McComb:

Q. Do you know why you didn't have longshoremen? A. Because they refused to cross a picket line that had been established.

Mr. Wright: I move to strike his testimony unless it was his own personal knowledge.

Trial Examiner: I will grant the motion unless he has personal knowledge as to the reason the longshoremen did not work.

Do you have gang foremen among the longshoremen?

The Witness: Yes, I have, but they are not working for us directly because that function is being taken care of by our berth agents.

Trial Examiner: Oh.

The Witness: For this purpose I think our berth agent has really—as far as our business is concerned, he is part of our own organization.

By Mr. McComb:

Q. Are you aware that there was picketing (50) taking place at the Cotton Warehouse Wharf at this time? A. Not by my personal knowledge, but I was so informed.

Q. Now, did you, with regard to this information which came to you, did you have any conversations with anyone connected with the NMU? About that situation? A. Yes, I did.

Q. With whom? A. With Mr. George.

Q. Who is Mr. George? A. Mr. George, I was told, is the port agent with the National Maritime Union here in New Orleans.

Q. Now, was this a face to face conversation or what? A. No. It was over the telephone.

Q. What day was it, if you recall? A. That was on June 18th.

Q. And did you call him or did he call you? A. I called him.

Trial Examiner: And what was said by you and by him, as best you remember?

The Witness: Well, I told him about our *Neva West* being picketed by members of his union. That

on the day before, on the morning of the 17th, we had ordered 6 gangs of men to work the ship to complete the loading, and this ship was supposed to take on military cargo and sail. That the men had been reordered and again would not cross the (51) picket line. And again on the morning of the 18th the men had reported and would not cross the picket line. I asked him, that certainly here was a vessel that had only a few hours work to do. It was sailing, and asked him why we were being subjected to this delay. He told me that we were not the only line that was being picketed, that there was some conversation about the situation as applied to other ports in the Gulf and he ended up by saying that here in New Orleans the vessels of the Delta Line, which were also manned by SIU crews, were being picketed.

I asked him, certainly that as far as this ship was concerned that he was unduly subjecting us to losses and a situation where we could not do anything about it, and asked him if he wouldn't reconsider and call off these pickets and give us an opportunity to complete our ship and sail, and he had previously told me in his conversation that he had full authority to put on or call off the pickets, and I asked him to do so because we had another ship in port and he could put his picket line at it.

He said he was sorry, that there was nothing he could do about it, and he just had to go along like this.

Trial Examiner: Now, did he suggest what, if anything, you could do to relieve yourself of this picketing?

The Witness: No, he did not, in this conversation.

By Mr. McComb:

Q. Did you have any other conversations (52) with him?
A. Yes. I had a conversation the following day.

Trial Examiner: That would be the 19th?
The Witness: The 19th, that's correct.

By Mr. McComb:

Q. Was this also a telephone conversation? A. Yes, it was.

Q. Did you call him? A. I called him.

Q. Tell us what was said in that conversation?

Trial Examiner: Did you know Mr. George?
The Witness: No, I did not.

By Mr. McComb:

Q. You have never had a contract with the NMU? A. No.

Q. Did you at any time in either of these conversations address him by name? A. Oh, yes.

Q. And he answered to that name? A. Yes, and I identified myself.

Q. The fellow you talked to on the 19th, was this the same person you talked to— A. The same voice.

Q. All right. Tell us what was said then. A. Well, the conversation was pretty much the same as on the previous day. I pleaded with him and asked him how much (53) longer we had to go on with this thing. There was nothing that we could do. It was a dispute that they had with some other union and we were not involved and we had nothing to do with it but we were simply subjected to losses because of the ship being idle. He went on to say; that it so happened in the meantime we had sent a letter through our trade organization and so forth trying to get these pickets pulled off——

Trial Examiner: What is your trade association?
The Witness: Well, the New Orleans Steamship Association, the International Trade Mart, the Board of Trade and so on.
Trial Examiner: You appealed to them to intervene on your behalf?

The Witness: Yes, as a group. He told me, well, says, "This is the situation. This has been going on for some time and this action has become necessary. We realize your position, however, there is nothing that we can do about it." He said, "We just want you to make a lot of noise." He said, "Just mention——"

I told him we had already made a lot of noise, and he said, "Well, once you get good and mad——

Trial Examiner: Who is this doing the talking? Who is this conversation with?

The Witness: This is the conversation with Mr. George.

Trial Examiner: Oh.

The Witness: This is what he told me. He said, "We (54) want you to be good and mad and make a lot of noise."

And I told him, "I don't know how much more noise we can make." And I told him about these communications and objections we had been voicing through our trade organizations and he said, "Well, did you talk to Mr. Paul Hall?"

And I told him, no, that I had not personally. Those matters are usually——

Trial Examiner: Paul Hall of the SIU?

The Witness: Yes.

Trial Examiner: Are they in this dispute, too, or just MEBA, or do I have to wait? Oh. All right.

Did you talk to Paul Hall?

The Witness: I told him that I did not personally, however, I told him that with all the noise we had been making I am sure that our Houston office, which usually handled labor matters of this sort, probably did talk to him.

He says, "Well, I want you to call Paul Hall and tell him to call off the MEBA pickets on the *Maximus*."

Trial Examiner: Where was that, in Philadelphia?

The Witness: I believe the ship was in Philadelphia, yes.

I then told him that was a matter that was out of my hands. However——

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(55) Trial Examiner: What he was implying was that there might be a trade there, if you could get Paul Hall to withdraw from the *Maximus,* he might withdraw from your ship?

The Witness: Yes. That he might release the pickets on our ship.

Then I again told him that this was not a matter that concerned us. That we were, we felt, unduly penalized by their actions and told him again, repeated again, the status of the Steamer *Neva West,* that she was ready to sail. That she had army cargo to load. All of this apparently did not impress him. I told him that I merely wanted him to know, to have all the information so that later on he could not say that if I had given him the information he might have reacted differently.

That about ended the conversation there.

Trial Examiner: Do I correctly assume that you have a contract with the SIU?

The Witness: Yes.

By Mr. McComb:

Q. Did the NMU notify you in advance of the picketing? A. No, sir.

Q. Does Bloomfield have any employees represented by the NMU? (56) A. No.

Q. Does Bloomfield have any labor contracts with the NMU? A. No, we have not.

Q. Has the NMU ever asked Bloomfield to recognize them? A. Not to my knowledge.

George E. Wieckhoff, for General Counsel—Direct.

Q. NMU ever requested Bloomfield to bargain with it for any reason that you know of? A. Not to my knowledge, no.

Q. Has Bloomfield ever had a labor dispute with NMU? A. No.

Q. Now, do you have a contract with MEBA? A. Yes.

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(57) Q. Do you recall the language on the sign you saw? A. Yes, it said, Informational Picketing, MEBA Engineers are interfering with——

Q. Interfering with Employers who lawfully recognize the NMU? A. That is correct, yes.

Q. Nothing on the sign would indicate that the NMU had any kind of a quarrel with you, with your company? A. That's right.

Q. Nothing on the sign to indicate that the picketing was directed toward your firm? A. Well, that's——

Q. I'm asking you if there was anything on any sign that you saw indicating that the picketing was directed at your firm? (58) A. No, sir. It did not say that.

Q. All right. The signs clearly indicated whatever the dispute was it was not with your company? A. No. The sign did not say that.

Q. All right, sir. Now, in connection with these telephone conversations that you had with Mr. George, he told you, did he not, that he had no quarrel with your company? A. He did.

Trial Examiner: The answer was he did say so, is that correct?

The Witness: Yes. He did.

Trial Examiner: There was no quarrel with Bloomfield?

Mr. Wright: Yes, that's what I understood.

Trial Examiner: I wanted to be sure that I heard him.

By Mr. Wright:

Q. As a matter of fact he told you that he regretted that you were involved in the matter, that he had no dispute with you? A. Yes, he did that and was very polite about it.

Q. He, I take it, told you that his complaint, the complaint of his union was with the conduct of another union? A. That is right.

Q. He told you that the picketing was directed toward the people on the waterfront—or he gave you his position on that dispute? A. He did that but I told him that it didn't make any (59) difference.

Q. I understand that. I am trying to get at what he actually told you. A. Yes, and I was telling you my reply.

Q. Yes. You stated your reply. I just wanted to be sure the record is clear as to what he told you, and he advised you that he thought the easiest way to solve the problem was to get Paul Hall's union to quit doing what they were doing? A. Yes.

Trial Examiner: Specifically, to stop picketing the ship *Maximus?*

The Witness: That's right.

By Mr. Wright:

Q. Now, your company has no connection of any kind with the NMU? A. That's right.

Q. And didn't have? A. No.

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HARRY B. ESTES a witness called by and on behalf of General Counsel, having (60) been duly sworn, was examined and testified as follows:

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Direct examination by Mr. McComb:

Q. What is your occupation, Mr. Estes? A. Wharf Superintendent, States Marine Agency, Incorporated.

Q. How long have you had that job? A. Five years.

Q. What is States Marine? What does States Marine Isthmian Agency do? A. We are a berth agent for Bloomfield Steamship Company, States Marine Lines, Incorporated and for Matson Lines.

Q. Now, you have wharf facilities in New Orleans? A. Yes, the Cotton Warehouse Wharf 4, 5, 6, 7 and 8.

Q. How many square feet of wharf is that? A. Around 380,000 feet, I believe.

Q. Does States Marine own that wharf? A. No. It's a preferential wharf rented from the State Docks Authority.

Q. Now, can you describe for us as best you can the physical layout of the Cotton Warehouse wharf? A. The Cotton Warehouse Wharf is at the foot of Napoleon Avenue. Those five sections.

(61) Q. How do people go to and from the Cotton Warehouse? A. Well, they go—the last street crossing is Tchoupitoulas, across Tchoupitoulas, across the I. C. Railroad yards and then there is an intersection coming from Stuyvesant Docks going into the Cotton Warehouse complex, and then some 100 yards beyond that there is a right turn on the wharf apron.

Q. I see. What is the Cotton Warehouse complex, just for the record? A. That is a series of warehouses formerly used almost exclusively for the storing of cotton.

Q. Is that separate from the Cotton Warehouse wharf? A. Yes.

Q. What is it separated by? A. It is separated by three concrete fields, they call them, and a series of railroad tracks.

Q. What actual operation does States Marine do at the Cotton Warehouse Wharf? A. We receive freight for the various lines, consolidate it for loading and perform loading, discharging the ships and deliver the freight from those vessels.

Q. Now, do you order longshore gangs for the loading and/or unloading of Bloomfield vessels? A. I place the orders, yes.

Q. Now, are you aware of any picketing having taken place at the Cotton Warehouse Wharf in June of this year? (62) A. Yes.

Q. Did you see it? A. Yes.

Q. When did you first see it? A. The morning of the 17th when I arrived for work.

Q. About what time of day was that? A. That was about 7:45.

Q. Were there any Bloomfield vessels at the Cotton Warehouse Wharf that day? A. The *Neva West* was there.

Q. Now, when you first saw the pickets that morning where were they? A. When I arrived there was an automobile at the intersection of the Stuyvesant Dock road and the road into the complex.

Q. I see. You say there was an automobile? A. An automobile——

Q. What else was there? A. Well, there were two signs leaning against the automobile.

Q. Did you read them? A. No.

Q. Did you at any time read—well, did you later read any picket signs at the Cotton Warehouse Wharf? A. Yes.

Q. All right. When? (63) A. I think later in the day, later that day.

Q. All right. Where were the picket signs when you actually read them? A. They were on the river side apron near the *Neva West.*

Q. Okay. Now, can you tell us what they said? A. I couldn't quote it verbatim, no. I have heard it twice in the hearing room.

Q. This morning? A. This morning.

Q. All right. Let me ask you if what you heard this morning— A. That's what I recall of the wording but I couldn't quote it without making some variation.

Q. The signs you saw contained the same thing that you heard testimony about in here this morning? A. Right.

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(64) By Mr. McComb:

Q. Now, sir, when you came to work that morning you saw these picket signs at the intersection which you have previously described, which is the intersection of the street leading to the Cotton Warehouse Wharf and the road coming from the Stuyvesant Docks, is that right? A. No. It is the road leading from Stuyvesant to the Cotton Warehouse Complex.

Q. I see, but it is the intersection of that road and the road going to the Cotton Warehouse complex? A. Right.

Q. Now, the pickets remained there throughout that day? A. No. Later in the day, sometime in the morning they moved to the river side apron.

Q. I see. In the vicinity of the *Neva West?* A. The stern of the vessel.

(65) Q. How many pickets? A. Two.

Q. Now, was there cargo work to be done on the *Neva West?* That day? A. Loading, yes.

Q. Did you order any longshore gangs for that purpose? A. I ordered six longshore gangs and 12 carpenters.

Trial Examiner: Did they arrive?

The Witness: There were a number of men there that were familiar faces, the ones that are there——

By Mr. McComb:

Q. Did they work? A. No work was performed.

Trial Examiner: Did they go aboard the ship?

The Witness: That I can't say. I am in charge of the wharf operations.

Trial Examiner: You are not in charge of the loading or unloading?

The Witness: I am not in charge of loading or unloading the vessel.

By Mr. McComb:

Q. You do order the gangs? A. I ordered the gangs, right.

Q. And you know there was no work done at that time? A. No work done.

Q. Did you order any gangs for later in the day? A. Yes, at 4:00 p. m. I ordered four gangs.

(66) Trial Examiner: You ordered gangs through a stevedoring company, is that right?

The Witness: T. Smith and Company, yes.

By Mr. McComb:

Q. And you ordered what? A. Four gangs and 12 carpenters for 6:00 o'clock.

Q. Did they work? A. No work was performed.

Trial Examiner: Who do you order the carpenters from?

The Witness: Same organization, the stevedoring company.

By Mr. McComb:

Q. Did the pickets remain at the side of the *Neva West* throughout that day? A. Yes. I saw them at various times passing the wharf.

Q. I don't remember whether you told us what time they moved from the outside— A. It was some time in the middle of the morning. I don't know the exact time.

Trial Examiner: Was there a gangplank going up to the *Neva West?*

The Witness: Yes.

Trial Examiner: Were there pickets at the gangplank?

The Witness: Later.

Trial Examiner: That's when you saw them?

The Witness: He asked where they were when they first moved, but later on they did go to the gangplank.

By Mr. McComb:

Q. Was any cargo work done at all on the (67) *Neva West* on June 17th? A. None at all.

Q. Now, so far, we have been speaking of longshore gangs, people who work the cargo. Now, I want to ask you if there was any one else ordered to do work that day who did not? A. No. There was no one ordered that did not work.

Q. Was there any one who did not work part of the day? A. Well, yes, the lift operators. They didn't go to work until something like 9:30.

Q. At what time did they report? A. Well, they report for duty at 8:00 o'clock.

Q. What happened?

Trial Examiner: These are fork lift operators who work on the wharf?

The Witness: Yes.

Trial Examiner: What union are they with?

The Witness: 854.

Trial Examiner: Of what?

The Witness: I don't know. They are affiliated with the Maritime——

Trial Examiner: But they are not longshoremen?

The Witness: No. They are carloaders and they do the work of unloading cars and lift operations.

Trial Examiner: Then the longshoremen pick it up from there and get it on the ship?

(68) The Witness: Yes. They place it on the wharf and the longshoremen take it from the wharf into the ship.

By Mr. McComb:

Q. Now, did they come at 8:00 o'clock? A. Yes.

Q. What happened? A. Well, at first, when they went to get gasoline or came from their garage, after gassing up, they stopped at the car. I saw some of them at the car as I came to work, where the two signs were.

Q. Now, where do they have to go to get gasoline? A. It is over—their pump is on the side of the road leading into the Cotton Warehouse complex.

Q. So, when they go to get gasoline is it true that they pass this intersection where the pickets were? A. Right.

Trial Examiner: If they come back in they had to pass pickets? Did they or didn't they?

The Witness: Yes. The Wharf 7 and 8 operators pass the pickets.

By Mr. McComb:

Q. And it is at that point that they stopped? A. That they stopped.

Q. For how long a period did they not work, approximately? A. Well, it was between 9:30 and 10:00 o'clock when they reported for work.

(69) Q. I see.

Trial Examiner: That's when they reported. When did they go to work?

The Witness: They went to work as soon as they came on the wharf, if I recall. We paid them from 9:30.

By Mr. McComb:

Q. So as I understand it, they come in at 8:00 o'clock to get gas, and after they got gas they came back and stopped at the picket line and did not come immediately back in? A. That is right.

Trial Examiner: There was a period of about 8:00 a. m. to 9:30 or 10:00 a. m. when they did not work?

The Witness: Right.

By Mr. McComb:

Q. Now, directing your attention to the following day, June 18th, I ask you if the *Neva West* was still at the Cotton Warehouse Wharf? A. It was.

Q. Did you order gangs, longshore gangs, for that day? A. I did.

Q. For what time? A. For 8:00 a. m. start.

Q. How many? A. Six gangs and 12 carpenters.

Q. Did they work? A. No work was performed.

(70) Q. Did you see picketing that day? A. Yes.

Q. Where? A. On the apron abreast the ship.

Q. Is this by the gangplank? A. By the gangplank.

Q. Did the pickets have the same signs? A. Yes.

Q. Did you order any more longshore gangs for later that day? A. At 4:00 p. m. we ordered four general gangs and 12 carpenters.

Q. For when? A. 6:00 p. m.

Q. Did they work? A. No work was performed.

Q. Did you order any more for that day? This is still the 18th. A. No.

Q. All right, then. Now, what about June 19th? Was the *Neva West* still there? A. The *Neva West* was there.

Q. Were the pickets still there? A. Yes.

Q. Where were they? (71) A. On the apron abreast of the ship.

Q. Did you order gangs for that day? A. I ordered six gangs and 12 carpenters at 6:00 a. m. to report for 8:00 a. m. work.

Q. Did they work? A. No work was performed.

Trial Examiner: Did they report?

The Witness: Every day there were a few men there. I couldn't say as to how many gangs reported.

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(72) By Mr. McComb:

Q. Now, I believe we were up to the morning of the 19th. How about later on in the 19th? Did you order any more gangs? A. We ordered four gangs and 12 carpenters at 4:00 p. m. for 6:00 o'clock start.

Q. And did any of them report? A. Yes. There was some men there as there was every day.

Q. Was there any work done? A. No work was performed.

Q. Now, what about the 20th? A. On the morning of the 20th I ordered 6 gangs and 12 carpenters for the *Neva West*. I ordered 5 burlap gangs and one coffee gang for the *Steel Director* of the Isthmian Line.

Q. I see. Did any of those gangs report? A. Yes, sir.

Q. Did they work? A. No work was performed.

Q. They didn't work on the *Steel Director* either? A. No.

Q. Were there pickets by the *Steel Director?* A. Yes.

Q. How many? A. As I recall there were 3 that day.

(73) Q. At the *Steel Director?* A. No. One at the *Director*.

Q. Where were the other two? A. The vessels were—The *Neva West* was in 5 and 6 and the *Steel Director* was in 7 over there. Well, there were all in the same—well, the same vicinity.

Q. Well, now, what about later on the 20th? Did you order any more gangs? A. Yes. On the 20th we ordered four in the afternoon. We ordered four gangs for the *Neva West* and 12 carpenters and we ordered five burlap gangs and one coffee gang for the *Steel Director*.

Q. Did they work? A. Yes, they worked.

Q. Were there pickets there at that time? A. No.

Q. And when did the pickets disappear? A. Some time after lunch. I wasn't present, but some time immediately after lunch.

Q. Did they ever reappear? A. I didn't see them, no.

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Trial Examiner: Did you make any inquiry as to why these (74) longshoremen weren't working?

The Witness: No.

Trial Examiner: Did you make any inquiries of why they went back?

The Witness: No.

Trial Examiner: Do you know what time the pickets left?

The Witness: It was after lunch.

Trial Examiner: On the 20th? And you don't know why they started or why they quit?

The Witness: No, sir. After I once order the gang my responsibility goes to the loading supervisor.

Trial Examiner: Yes.

By Mr. Wright:

Q. Mr. Estes, where was the *Steel Director?* A. The *Steel Director* was in section 7 of the Cotton Warehouse.

Q. Are you telling this Examiner that you saw a picket at the *Steel Director?* A. At the bow of the ship, yes.

Q. How far was the ship from the *Neva West?* A. They were bow to stern.

Q. Well, I am somewhat confused as to what you are saying here; the *Neva West* had pickets where? A. Abreast of the ship. They usually walk for exercise from one place to another.

Q. You are saying that there was a picket, you are telling (75) this Examiner there was a picket who was assigned in your judgment for picketing the *Steel Director?* A. No. I didn't say that.

Q. Well, now, we are going to find out. There was no picket on the *Steel Director*, was there? A. I saw one walk by the bow of the ship. Now, as to whether he was picketing the *Neva West* or the *Steel Director*——

Trial Examiner: They were bow to stern and you probably couldn't distinguish.

By Mr. Wright:

Q. Now, I am back to where I started. You are not telling the Examiner that anybody was picketing the *Steel Director*? A. No, sir. I am not.

Q. All right. I assume from your answer to a question asked by the Examiner that you had no conversation with the gang foreman, the pickets or anybody about this situation? A. No, that doesn't come under my jurisdiction, any of that part of the work.

Trial Examiner: You stop after you make the phone calls?

The Witness: That's right. I stop 12 inches from the vessel.

By Mr. Wright:

Q. And you say that you used T. Smith and Company as your stevedoring people? A. Yes. We have a contract with them to do all our stevedoring.

(76) So you called them and they in turn get the longshoremen? A. Right.

Q. You have nothing to do with that? A. No, I have nothing to do with the longshoremen other than place the order.

Q. Are you acquainted with the contract that the longshoremen have? A. Well, to some extent by a common working.

Q. Well, you pay your bills under the contract, don't you? A. The auditor does, yes, sir.

Q. Are you acquainted with what the situation is regarding rain? A. Yes.

Q. They won't work? They cover up? A. Well, yes.

Q. And stay covered until the rain stops? A. Right.

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(77) Q. The people who work inside, these are the ones that you say didn't go to work at 8:00 but did go to work around 9:30? A. No, not the people that work inside. Just the lift operators.

Q. Just the ones—just the lift operators. How many of those were there? A. 10, I believe. There were 10 ordered that day.

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CHRISTIAN M. VOELKEL, JR., a witness called by and on behalf of General Counsel, having (78) been duly sworn, was examined and testified as follows:

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Direct examination by Mr. McComb:

Q. Will you spell your last name, please? A. V-o-e-l-k-e-l.

Q. And what is your occupation? A. I am president and general manager of Dixie Machine, Metal and Welding Works, Incorporated, and Welding and Manufacturing Company.

Q. Is that a corporation and in what state is it incorporated? A. Louisiana.

Q. What does your corporation do? A. We are primarily in the marine repair business, but we also have a subsidiary, this Welding and Manufacturing Company whereby we do structural steel fabrications and erections.

Q. I see. Do you have any out of state customers? A. Yes, sir, we do.

Q. In this business that you have described? A. That is correct.

Q. Do you, as a result of this business, derive an annual (79) gross income of—in excess—now I want to restrict this to your business with out of state customers. Do you derive business in excess of $50,000 annually? A. I would think so in the structure of both organizations, yes.

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TILLIS GAUTHIER, a witness called by and on behalf of General Counsel, having been duly sworn, was examined and testified as follows:

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Direct examination by Mr. McComb:

Q. Where do you work, Mr. Gauthier? A. Dixie Machine and Metal.

Q. All right. What is your job there? A. Pipefitter foreman.

Q. How long have you been working for Dixie? A. 22 years.

(80) Q. How long have you been a pipefitter foreman? A. Oh, about 10 years.

Q. All right. Were you pipefitter foreman in June of this year? A. Yes.

Q. Now, in that connection let me ask you if you had occasion to do any work aboard the *Neva West?* A. On June the 15th we had a job ordered.

Q. Had a what?

Trial Examiner: Had a job on it.

By Mr. McComb:

Q. All right. What were you supposed to do? A. Well, we had to send out there to have a line repaired and we knew there was a picket line.

Trial Examiner: You knew there was a picket line on the 15th? Is this right?

The Witness: Well, Mr. Steel asked me to go check——

Trial Examiner: Who is Mr. Steel?

The Witness: The superintendent at Dixie, and see if it was all right to go aboard.

By Mr. McComb:

Q. And did you do that? A. Yes, I did. I went up to the ship and I introduced myself.

Q. To whom? A. The man with the picket, and I asked him if it was all (81) right to go aboard to do repair work, and he told me no. Only people with personal belongings was allowed to go.

Q. So what did you do? A. Well, I come on. I'm a union man and I can't cross the line.

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Trial Examiner: Did you ever go back and finish the pipefitting job?

The Witness: Later on.

Trial Examiner: You don't remember the date?

The Witness: No. It was a few days after.

By Mr. McComb:

Q. Well, let me ask you this. When you went back was there a picket there? A. No, sir.

• • • • • •

Cross examination by Mr. Wright:

• • • • • •

(82) Q. I'm trying to get what the picket actually told you. The only thing he told you was for information about the picket line, call the union hall. Isn't that what he told you? A. No. He told me nobody but people with personal belongings could go aboard.

• • • • • •

(83) Q. And you do say that he did tell you in addition to this other, that he did tell you to call the union hall? A. He said maybe you can call the union hall.

Q. I thought you said a moment ago—I thought you had already agreed with me that the person you are talking about had said to you, "For any information, call the union hall." This is correct, isn't it? A. He said, probably if we called the union hall we could find out something.

• • • • • •

(84) EDWARD THEODORE, JR., a witness called by and on behalf of General Counsel, having been duly sworn, was examined and testified as follows:

• • • • • •

Direct examination by Mr. McComb:

Q. Who do you work for? A. I'm the delegate for Local 854.

Q. What union is that? A. Freight Cars and Barges, ILA, AFL-CIO.

Trial Examiner: Are they associated with the longshoremen?

The Witness: Yes.

By Mr. McComb:

Q. What sort of work do your members do? A. Unload boxcars, unload barges, run forklift, handle freight on the wharf.

Q. As delegate for Local 854 what are your daily duties? What do you do? (85) A. Well, going around settling grievances, if any come up during the day, anybody that calls and reports any grievance that comes up.

Q. All right. Were you delegate for Local 854 in June of this year? A. Yes, I was.

Q. All right. And you have heard testimony here about picketing at the Cotton Warehouse in New Orleans? A. Yes.

Q. Did you have occasion to go over there during that time? A. Well, I was called to go over there. I was over there on Perrier Street at that time.

Q. When was this? A. June 17th.

Q. Do you remember about what time of day? A. Well, it was around about 20 minutes after 9:00 when I was called, when I checked into the office. It was around about 9:20, and they told me that I had a call up for the Cotton Warehouse. The men was disturbed.

Q. And did you go over there? A. I rushed on up there and go up there around about 20 minutes till 10:00.

Q. You have members there? A. Yes.

Q. Well, tell us what happened when you got there. (86) A. Well, when I got over there I found all my men on the outside, so I walked up and I asked them what was going on. So they said that they had a picket set up out there, and I asked them, "Where is the picket at?"

And so he said, he told me "He's over there in the car over there." It was raining at the time so the pickets, they had two fellows sitting in the car and the picket was sitting in front of the car, so I walked over to the car and I asked the fellows, I said, "What are you picketing for?"

So they explained me, they told me what those pickets were for, so I told them——

> Trial Examiner: What did they say? What was the explanation?
>
> The Witness: I disremember what they say.
>
> Trial Examiner: There were two men—three men in this car, one in the front seat and two in the rear?
>
> The Witness: No. Two men in there. Two in the front, and I talked to one of the fellows and I told him that they were picketing in the wrong place.

By Mr. McComb:

Q. Where was the picket at this time? A. They have a street coming from Stuyvesant Docks, and they have one

coming in to go into the Cotton Warehouse. Well, they was between the street what come from Stuyvesant Docks and the railroad tracks.

Q. I see. Is this on the road leading into the Cotton (87) Warehouse wharf? A. Yes, it is.

Q. All right. Go ahead. A. So, after I told him, well, I said, "You're picketing the wrong place."

He said, "Well, let's go to the phone, then." And he went to the telephone, and he talked to someone—I don't know who he talked to.

Q. Did you go with him? A. Yes, I went with him.

Q. Where was the telephone? A. The telephone was sitting on Tchoupitoulas Street between the neutral ground and Napoleon.

Q. I see. Now, what happened then? You said he made a telephone call. A. Yes, he made a telephone call. When he got off the telephone—whomsoever he was talking to—he got off the telephone and he said to me, "We are not picketing the docks. We are picketing the ship to keep the longshoremen from going on."

Q. All right. And do you know who this man was that you talked with? A. No, I don't.

Q. He was in the car where the pickets were? A. Yes.

Q. Your members that you had over there at this time, that (88) you went over to see about, what do they do? What jobs do they do? A. They run forklifts. They stack freight on the wharf.

Cross examination by Mr. Wright:

Q. Mr. Theodore, while you were there did you see Mr. Tom Harris? A. Yes, sir.

Q. Do you know that Mr. Harris is with the NMU? (89) A. Yes.

Q. You had some conversation with him? A. Yes.

Q. He explained to you that this was simply an informational picket line and to picket the ships? As far as you know, as soon as the NMU got permission to get on the

apron next to the water, they got out where the ship was? A. Well, this is what happened there. I talked to my president and he said that he would call and ask the Dock Board to have the pickets moved where they belonged.

Q. Well, you don't know how they got moved? You just know that ultimately as soon as whoever could clear, cleared it, they got out on the apron where the ship was, and you had no more difficulty at all? A. That's right.

Q. And all Mr. Harris told you was that they were not picketing your place of work, it was simply an informational picket line and wanted to picket the ship? A. That's right.

• • • • • •

(91) EDGAR R. SEAMEN was called as a witness by and on behalf of General Counsel, having been duly sworn, was examined and testified as follows:

• • • • • •

Direct examination by Mr. McComb:

Q. What is your occupation, Captain Seamen? A. I am the Port Captain for the Delta Steamship Line, New Orleans.

Trial Examiner: What line?

The Witness: Delta.

By Mr. McComb:

Q. How long have you held this position? A. Since 1959.

Q. Now, I ask you, Captain—well, what are your duties as port captain, what do you do? A. My main duties are the operations of the ship's personnel, arranging for the arrival of ships, departures of the ships, the crewing of the ships and the storing of the ships, the inspections of whatever might happen.

(92) Q. Do you know if there is a record kept of weather conditions when one of your vessels is in port? A. Well, the weather is usually recorded in the ship's log book.

Edgar R. Seamen, for General Counsel—Direct.

Q. In the ship's log book, and did you at my request bring that ship's logs with you, for the *Del Mar* and the *Del Valle*? A. I have the carbon copy of the ship log book of the *Del Mar*.

Q. Is this log kept under your supervision and custody? A. This log is kept in the file room at the main office.

Q. I see. Now, I want you to look at this log book, if you will, for the month of June and specifically June 17th and tell us what the weather conditions it says, if any.

• • • • • •

(94) The Witness: It shows for 4:00 a. m., cloudy. 8:00 a. m., rain. 12:00 noon, cloudy. 4:00 p. m., cloudy. 8:00 p. m., cloudy.

By Mr. McComb:

Q. All right. Now, tell us about the 18th. A. 18th. 4:00 a. m., overcast. 8:00 a.m., overcast. 12:00 noon, rain. 4:00 p. m., overcast. 8:00 p. m., overcast.

Q. 19th, if you have it. A. 4:00 a. m., cloudy. 12:00 noon, rain. 4:00 p. m., drizzle. 8:00 p. m., overcast.

Q. And for the 20th? A. The 20th. 4:00 a. m., overcast. 8:00 a. m., overcast. 12:00 noon, overcast, rain. 4:00 p. m., rain. 8:00 p. m., overcast. Midnight, partly cloudy.

Q. All right, now. I'll ask you to look at your log for (95) the *Del Mar* beginning the 17th. A. The *Del Mar* didn't arrive in New Orleans until——

Q. That's right. A. —3:20 on the afternoon of the 18th.

Q. All right. Begin there. A. 1600, overcast. 8:00 p. m., overcast. Midnight, partly cloudy.

Q. Now, for the 19th. A. 4:00 a. m., cloudy. 8:00 a. m., cloudy and rain. 12:00, light rain. 4:00 p. m., overcast. 8:00 p. m., overcast. Midnight, partly cloudy.

Q. For the 20th? A. 20th. 8:00 a. m., overcast, rain. 12:00 noon, overcast, rain. 4:00 p. m., overcast, rain. 8:00 p. m., partly cloudy. Midnight, clear.

Decision and Order.

D-6228
Philadelphia, Pa.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO *and* WEYERHAEUSER LINES, A DIVISION OF THE WEYERHAEUSER COMPANY.	Case No. 4-CC-262
NATIONAL MARITIME UNION OF AMERICA, AFL-CIO *and* CALMAR STEAMSHIP CORPORATION.	Case No. 4-CC-263

DECISION AND ORDER.

On January 10, 1964, Trial Examiner Louis Libbin issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in his Decision attached hereto. Thereafter, the General Counsel, Charging Parties, and the Respondent filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The

Board has considered the Trial Examiner's Decision, the exceptions and briefs and the entire record in this case and hereby adopts the findings,[1] conclusions,[2] and recommendations of the Trial Examiner with the additions noted below.[3]

ORDER.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner with the following modifications, and orders that the Respondent, its officers, agents, and representatives, shall abide by

---

[1] We agree with the Trial Examiner that Respondent's picketing constituted coercion and restraint within 8(b)(4)(ii), but in so finding, we rely upon the evidence, noted in footnote 2, *infra*, that Respondent's picketing was for an object of causing a general cessation of business between employers engaged at the situs of the picketing. See e.g., *Plumbers and Pipefitters Local 142, AFL-CIO (Piggly Wiggly)*, 133 NLRB 307, 314.

[2] Respondent, while conceding that it had no controversy with the employers engaged in operations at Pier 27, nevertheless argues that the vessels berthed at this pier were the primary situs of the dispute because manned by employees represented by MEBA. There is no merit in this contention, as it had no dispute with the owners of the vessels, and like the Trial Examiner, we conclude that Respondent's action occurred at a purely neutral situs.

We also agree with the Trial Examiner that the record affirmatively shows that Respondent's conduct had a cessation of business objective. In addition to the facts on which he relied, further evidentiary support for this conclusion appears in the leaflet distributed from the picket line, which, by its implicit appeal that union members honor the picket line and by its express indication that "trouble" was in store for the shipowners and stevedore companies, manifested Respondent's clear intention of denying neutral employers the work force on which their operations depended, so as to force and require a cessation of business between said employers and other persons within the meaning of Section 8(b)(4)(B) of the Act.

[3] Respondent contends that the Board may not assert jurisdiction in the instant case because the record does not disclose the existence of a "labor dispute." We disagree. As the instant case stems from an interunion controversy concerning the representation of employees for purposes of collective bargaining, an underlying labor dispute is involved. Furthermore, we have held that our jurisdiction is not predicated upon the existence of a labor dispute. *Local 1355, International Longshoremen's Association (Maryland Ship Ceiling Co.)*, 146 NLRB No. 100, *enf. den.* F. 2d (C. A. 4, May 21, 1964). Although the Fourth Circuit, in reversing the cited case, disagreed, finding such a dispute to be essential, the Board respectfully adheres, until such time as the issue is finally resolved by the Supreme Court, to the view that its power to prevent unfair labor practices is not so qualified.

We also reject Respondent's contention that the conduct involved herein is protected by the "publicity, other than picketing" proviso to 8(b)(4). *International Brotherhood of Electrical Workers* v. *N.L.R.B.*, 341 U. S. 694, 705.

the terms of the Trial Examiner's Recommended Order, as modified below.

1. The Recommended Order is modified by substituting the following for paragraph 1:

1. Cease and desist from:

(a) Inducing or encouraging individuals employed in the Port of Philadelphia by Weyerhaeuser Lines, A Division of The Weyerhaeuser Company; by Calmar Steamship Corporation; by Nacirema Operating Company; by Hinkins Steamship Agency; or by any other person engaged in commerce or an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require any of the aforementioned persons to cease doing business with each other or any other person.

(b) Threatening, coercing, or restraining, in the Port of Philadelphia, said persons or any other person engaged in commerce or an industry affecting commerce where an object thereof is to force or require any of the foregoing persons to cease doing business with each other or any other person.

2. The notice attached hereto and marked "Appendix" is substituted for the notice recommended by the Trial Examiner.

Dated, Washington, D. C. Jun 30 1964

FRANK W. MCCULLOCH,
Chairman

BOYD LEEDOM,
Member

JOHN H. FANNING,
Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX.

NOTICE TO ALL EMPLOYEES OF WEYERHAEUSER LINES, A DIVISION OF THE WEYERHAEUSER COMPANY; CALMAR STEAMSHIP CORPORATION; NACIREMA OPERATING COMPANY, INC.; HINKINS STEAMSHIP AGENCY, and of all other persons engaged in commerce or an industry affecting commerce in the Port of Philadelphia, Pennsylvania.

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage individuals employed in the Port of Philadelphia, by any of the above-named persons or any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, articles, or commodities, or to perform any services where an object thereof is to force or require any of the aforesaid persons to cease doing business with each other or with any other person.

WE WILL NOT threaten, coerce, or restrain in the Port of Philadelphia, any of the above-named persons, or any other person engaged in commerce or in an industry affecting commerce where an object thereof is to force or require said persons to cease doing business with each other or any other person.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO
(Labor Organization)

Dated..... By.....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1700 Bankers Security Building, Walnut and Juniper Streets, Philadelphia, Pennsylvania, 19107 (Tel. No. 735-2612), if they have any question concerning this notice or compliance with its provisions.

TXD-13-64
Philadelphia, Pa.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *and* WEYERHAEUSER LINES, A DIVISION OF THE WEYERHAEUSER COMPANY.	Case No. 4-CC-262
NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *and* CALMAR STEAMSHIP CORPORATION.	Case No. 4-CC-263

DAVID S. REISMAN, Esq., for the General Counsel.

S. GERALD LITVIN, Esq., of FREEDMAN, LANDY & LORRY, Esqs., of Philadelphia, Pa., for NMU, the Respondent.

EUGENE R. LIPPMAN, Esq., of KRUSEN, EVANS & BYRNE, Esqs., Philadelphia, Pa., for the Charging Parties.

Before:

LOUIS LIBBIN, Trial Examiner.

TRIAL EXAMINER'S DECISION.

STATEMENT OF THE CASE.

Upon charges filed on June 18, 1963, by Weyerhaeuser Lines, a division of the Weyerhaeuser Company, herein called Weyerhaeuser, and on June 20, 1963, by Calmar Steamship Corporation, herein called Calmar, the General Counsel of the National Labor Relations Board, by the then Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued his consolidated complaint, dated July 22, 1963, against National Maritime Union of America, AFL-CIO, herein called NMU or the Respondent. With respect to the unfair labor practices, the consolidated complaint alleges, in substance, that Respondent engaged in conduct violative of Section 8(b)(4)(i)(ii)(B) of the Act. In its duly filed answer Respondent denied the unfair labor practice allegations.

Pursuant to due notice, a hearing was held before me in Philadelphia, Pennsylvania, on October 2, 3, and 14, 1963. All parties were represented by counsel who participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs. On December 6, 1963, the General Counsel and the Respondent filed briefs, which I have fully considered. At the same time, counsel for the Charging Parties submitted a letter, in which he stated that the Charging Parties "will rely on the brief of the General Counsel."

Upon the entire record[1] in the case and from my obser-

[1] I hereby note and correct the following obvious errors in the typewritten transcript of testimony:

vation of the witnesses, I make the following:

Page	Line	For the Words	Substitute
21	21	had	had no
64	13	employees	employers
92	8	further	future
132	5	the	to
151	1	Litvin	Lippman
218	25	Litvin	Lippman
225	8	Now	And
235	11	fines	signs
255	1	as	at
268	24	IRA	ILA
273	7	IRA	ILA
326	5	content	consent
328	25	at	out

Trial Examiner's Decision.

FINDINGS OF FACT.

I. The Employers involved and their business.

Weyerhaeuser Lines, a division of the Weyerhaeuser Company, one of the Charging Parties herein called Weyerhaeuser, is a Washington corporation engaged in the business of transporting cargo by ocean-going vessels between various States in the United States and in performing services related thereo. It is licensed by the Interstate Commerce Commission and receives approximately $10,000,000, a year in revenue from its intercoastal operation of six vessels.

Calmar Steamship Corporation, the other Charging Party herein called Calmar, is a Delaware corporation and wholly owned subsidiary of Bethlehem Steel Corporation, and is engaged in the business of transporting cargo by ocean-going vessels between various States in the United States and in performing services related thereto. It is licensed by the Interstate Commerce Commission and receives in excess of $10,000,000 a year in revenue from its intercoastal operation of 10 vessels.

Nacirema Operating Co., Inc., herein called Nacirema, is a corporation engaged in the Port of Philadelphia in performing stevedoring services. It has an office on the north side of Pier 27 and a contract with Weyerhaeuser for the performance of its stevedoring operations on the Atlantic coast.

Hinkins Steamship Agency, herein called Hinkins, is the agent for Weyerhaeuser in soliciting its cargo, in receiving its cargo on the pier, in arranging for its bookings, in arranging for the docking of its ships, and in ordering longshoremen for the unloading and loading of its ships.

Upon the above undisputed facts, I find that Weyerhaeuser, Calmar, Nacirema, and Hinkins are engaged in commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) of the Act.

II. The labor organization involved.

The complaint alleges, the answer admits, the record shows, and I find, that National Maritime Union of America, AFL-CIO, the Respondent herein, is a labor organization within the meaning of Section 2(5) of the Act.

III. The unfair labor practices[2]

A. *Introduction; the issues*

The SS. *George S. Long,* one of the vessels operated by Weyerhaeuser, docked at Pier 27 in the Port of Philadelphia on June 14, 1963. It was scheduled to be loaded that morning and to sail that evening for Baltimore, Maryland, where it would complete its loading before sailing for the west coast. The SS. *Portmar,* one of the vessels operated by Calmar, docked at Pier 27, and was scheduled to be loaded, on Wednesday, June 19. Both Weyerhaeuser and Calmar, at all times material herein, had collective-bargaining agreements with various labor organizations, other than NMU, representing the employees on their vessels. One of the agreements was with the Marine Engineers Beneficial Association, herein called MEBA, which represented the licensed engineers employed by both companies on these vessels. From June 14 to June 20, 1963, Respondent NMU picketed at Pier 27. As a result of the picketing, the *George S. Long* and the *Portmar* were not loaded until June 20. Respondent concedes that it had no dispute of any kind with Weyerhaeuser, Calmar, Nacirema, Hinkins or with any other employer or person performing services at Pier 27.

The issue litigated in this proceeding is whether the picketing and Respondent's concurrent conduct at Pier 27 was violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

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[2] Unless otherwise indicated, the factual findings are based on exhibits and credited testimony which are either admitted or undenied.

B. *The dispute which caused Respondent's picketing at Pier 27*

On June 10, 1963, the SS. *Maximus,* then owned by Cambridge Carriers, docked at Pier 84 South in the Port of Philadelphia. That vessel had been commissioned to take food and drugs to Cuba in exchange for prisoners captured during the "Bay of Pigs" invasion. Cambridge Carriers had previously entered into collective-bargaining agreements with NMU and the Brotherhood of Marine Officers, an NMU affiliate, as the representatives of its unlicensed and licensed personnel, respectively.

Beginning with June 10, the Marine Engineers Beneficial Association, herein called MEBA, established picket lines at Pier 84 South and exhibited placards describing Cambridge Carriers as unfair to MEBA engineers. At the same time, Luckenbach Stevedoring Company, with whom Cambridge Carriers had a contract for the loading of the *Maximus,* failed to order the longshoremen gangs required by the contract. As a result, the *Maximus* remained unloaded at Pier 84 South until June 21, when the picketing ceased and the cargo began to be loaded.

Meanwhile, on Wednesday morning, June 12, NMU established counter-picket lines at Pier 84 South, carrying three sets of placards. One stated that "This is an interunion dispute only"; another stated, "The MEBA picketing is only jurisdictional"; and the third stated, "MEBA has no contract with Cambridge, Inc., SS. *Maximus.*"

C. *Respondent's picketing at Pier 27*

Beginning with Friday, June 14, NMU established picket lines at various piers in the Port of Philadelphia, including Pier 27. The pickets carried large white placards, suspended from their neck by a string, which contained the statement arranged in the following sequence:

Trial Examiner's Decision.

INFORMATIONAL PICKETING MEBA ENGINEERS INTERFERES WITH LAWFULLY RECOGNIZED N. M. U.

On June 14, Weyerhaeuser's vessel, the *George S. Long,* was moored at the north side of Pier 27. On June 19, Calmar's vessel, the SS *Portmar,* was moored at the south side of Pier 27. Louis Parisi, Respondent's port agent in the Port of Philadelphia, testified that the only standard used for choosing the picketing site was the presence of a MEBA crew aboard a vessel that was berthed at a particular pier. As previously noted, both the SS *George S. Long* and the SS *Portmar* had MEBA crews under collective-bargaining agreements with Weyerhaeuser and Calmar, respectively.

The pickets were patrolling on a public street in front of the three entrances to Pier 27. During the period from June 14 to June 20, two pickets patrolled at each of the two entrances to the north side of the pier; and during part of that period, when the SS *Portmar* was moored on the south side of the pier, two additional pickets also patrolled in front of the entrance to the south side of the pier. The picketing began about 7 a.m. and continued until about 2:30 or 3 p.m., except for the first day when it continued until about 7 or 8 p.m. About 10 other men stood or sat around in nearby parked cars, which also contained the same placards. Six of these men relieved the pickets every half hour; the remaining number relieved the latter group during lunch period. The pickets, as well as the other NMU men, also passed out leaflets, addressed "To all union men": This leaflet stated, in substance, that the crew and licensed officers of the *Maximus* are members of the NMU and its affiliate, that they are all under union contract, that MEBA is picketing the *Maximus* because it wants the jobs of the

members of the NMU and its affiliate, that "you're the only ones that can stop them from making this trouble"; and that "the NMU is out to put a stop to this kind of thing."

The picketing continued from June 14 to June 20 excluding Sunday. During that period, the SS *George S. Long* and the SS *Portmar* could not be unloaded or loaded because the longshoremen would not cross the picket lines. Nacirema had a contract with Weyerhaeuser for the performance of the stevedoring operations on the Atlantic coast. Thomas Cadden, the stevedoring superintendent for Nacirema, hired groups of longshoremen for loading cargo on the *George S. Long* each day, except Sunday, from June 14 to June 19. The longshoremen shaped up about 7 a.m. and were hired at 7:30 a.m. for an 8 o'clock start. Each morning when the gangs of longshoremen arrived at the north side of Pier 27, where the *George S. Long* was berthed, the picket line was there and the men refused to cross the picket line to go to work. Robert E. Moran, the district agent of Calmar, ordered a day and night gang of longshoremen for June 19 and June 20 to unload the cargo of the SS *Portmar*. Each day, the day gang reported at 8 a.m. but refused to cross the picket line. There was no picket line at night, and the night gang worked.

The MEBA picketing of the *Maximus* ended on June 20, 1963, and loading operations began the following day. Respondent's picketing at the various piers in the Port of Philadelphia, including Pier 27, ended at the same time, and the vessels, *George S. Long* and *Portmar*, were then loaded.

D. *Respondent's conduct in conjunction with said picketing.*

The Hinkins Steamship Agency, herein called Hinkins, is located on the south side of Pier 27. It is Weyerhaeuser's agent for the soliciting and receiving of cargo which is to be loaded in Weyerhaeuser's vessels. Charles Donahue, a receiving clerk of Hinkins, was informed of the

picketing at Pier 27 shortly before 8 a. m. on June 14, when he and other employees were preparing to receive cargo on the pier for the *George S. Long*. He looked out and observed the pickets congregated on the north side of Pier 27 where the *George S. Long* was moored. Being a union member of Local 1242 of the International Longshoremen's Association, herein called the ILA, Donahue telephoned to his delegate and was informed that, as long as there were no pickets on the south side of the pier, he could work. However, as he was preparing to unload certain trucks which were waiting, he observed a stray picket with a placard walking past the south side of the pier. Upon his inquiry, Donahue was directed by one of the pickets to the picket captain. He then asked the picket captain, Francisco Jardine, if he had any objection to the Company receiving freight on the south side of the pier. At that time, no ship was docked on the south side. Jardine replied, "yes." Donahue then stated, "well, if you have any objections, then you'd better put pickets over there because I must have a reason for not going in there." Immediately thereafter, four pickets were sent to the south side of the pier, and the truck unloading operations on the pier ceased.[3]

Edward Shallow, manager of Hinkins, was informed by Donahue on the morning of June 14 that there were picket

[3] The findings in this paragraph are based on the credited testimony of Charles Donahue, who impressed me as being a frank, candid and truthful witness. Although Donahue did not know the name of the picket captain, he identified him sufficiently so that I was able to recognize Jardine as being the person whom Donahue described. Jardine admitted that he was Respondent's patrolman in the Port of Philadelphia and the picket captain at Pier 27 during June 1963. At first he denied that he was ever asked by anyone at Pier 27 if he had any objection to receiving freight on the south side of the pier. After his recollection was allegedly refreshed, he admitted that "some fellow" who works there did ask him that, and testified that he replied "it was perfectly all right," and that he was "not stopping nothing." Jardine did not impress me as being a credible witness. He was frequently evasive, at times fenced with the General Counsel, and at other times assumed a pose of extreme naivete with respect to union matters of common knowledge. In view of all the foregoing, including the demeanor of the witnesses, I do not credit Jardine's testimony to the extent that it conflicts with that of Donahue, set forth in the text.

lines in front of Pier 27. Shallow's office had previously ordered longshoremen gangs, clerks and checkers, all union members, to work on cargo for the *George S. Long.* On the afternoon of June 14, Shallow telephoned to the NMU hall and talked to Lucien Smith, one of Respondent's patrolmen. Shallow inquired about the status of the picket line and was informed that meetings were then in progress in Philadelphia and New York. Shallow telephoned again that evening and was informed by Smith that there were no developments and that the picketing would continue. As a ship of another line was expected to arrive on Monday or Tuesday, Shallow again telephoned to the NMU hall on Sunday morning and talked to Louis Parisi, Respondent's agent for the Port of Philadelphia. Shallow inquired as to the status of the picketing and was told by Parisi that "any MEBA-manned ships would be picketed by the NMU."

Although longshoremen gangs had been ordered for every day, the *George S. Long* continued to remain unloaded. On Tuesday, June 18, Shallow telephoned to the NMU hall and spoke to Jardine, Respondent's patrolman and picket captain. Shallow requested that the pickets be removed from the front of Pier 27 and be placed alongside the gangway to the *George S. Long.*[4] Jardine replied that Shallow was "out of his mind." The next day, Shallow telephoned to Parisi at the NMU hall and found that he was not available. Jardine returned the call about 2:15 p. m. Shallow again asked Jardine if the picket line could be removed from the head of the pier to the gangway of the *George S. Long* on the north side of Pier 27. Jardine again stated that it was not possible and could not be done. Later that day, Jardine telephoned to Shallow, informed him that his request had been reconsidered, and stated that it

[4] Shallow's reason for this request was to enable him to receive 10 truckloads of cargo, which had been booked for the *George S. Long*, onto the pier so that the cargo would be in a position to be loaded immediately upon the removal of the pickets from the vicinity of the *George S. Long.*

would be all right to receive the cargo that night. However, as Weyerhaeuser had not ordered any night gangs since docking on June 14, Shallow replied that he could not receive the cargo on that night on such short notice because he did not have truckers available, but pointed out that he wanted to start the following morning when he could get the trucks lined up and the Company's clerks and checkers. At that time, Jardine said that it would be "okay to work the ship."[5]

The next morning, June 19, Shallow went down to the pier and saw the picket lines still in front of the pier. Upon being referred by a picket to Jardine as the man in charge, Shallow introduced himself to Jardine and referred to their telephone conversation of the preceding evening. Jardine thereupon accused Shallow of "pulling a fast one." Once again the removal of the picket line was discussed. Jardine then went into his office and telephoned to Parisi, and both Jardine and Shallow, in turn talked to Parisi. Shallow asked Parisi to remove the pickets and referred to Shallow's conversation with Jardine on the previous evening. Parisi stated that it was not at all possible to remove the pickets on a local basis and that the NMU in New York would have to be contacted. Shallow relayed this information to his principal, Weyerhaeuser.[6]

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[5] On the previous day, Weyerhaeuser had filed its unfair labor practice charge with the Board's Regional Office.

[6] The findings in the preceding paragraphs with respect to Shallow's conversations and activities are based on the credited testimony of Edward Shallow, who impressed me as a truthful witness. Lucien Smith did not testify. Parisi admitted that Jardine telephoned him on the morning of June 19 and that he also spoke to Shallow at that time. He testified that Shallow asked him if he would remove the pickets so that he could bring certain truckloads onto the pier and that he told Shallow that no one was stopping the trucks from coming in. Parisi admitted that he (Parisi) did not suggest any alternative place for the pickets and did not move the pickets after talking to Shallow. He further testified that no one is at the NMU hall on Sundays and that no one is there to receive telephone calls. Jardine denied ever being asked by anyone to move the pickets alongside the ship or to some place else on the pier. He admitted being asked one morning by a person at Pier 27 to move the pickets. He testified that he replied he could not do so without authorization from his agent. He admitted that he then telephoned to Parisi and that both he and

Trial Examiner's Decision.

Robert Moran, the district agent of Calmar, is in charge of supervising the loading of Calmar's ships and the laying out and accumulating of cargo alongside the vessels, work which is performed on the pier. On Wednesday, June 19, Calmar's vessel, the SS *Portmar,* was moored on the south side of Pier 27. That day, Moran needed to get his union clerks on the pier so that they could order the cargo down on car floats and belt lines. He therefore requested Picket Captain Jardine to split the picket line by moving the pickets away from each side of the doorway so that he could have a doorway open to get his unionized clerks into Calmar's office on the pier, as the clerks would not cross the picket line.[7] Jardine refused, stating that "we have to picket the whole pier." The pickets continued to cover the same area and Calmar's clerks refused to cross the picket line to go to work. Moran then made a similar request of Parisi in a telephone conversation that same morning. Parisi replied that he expected the matter to be resolved in the near future and that all he could tell Moran at that time was to wait. The next day, June 20, Moran again attempted to have Jardine move the picket line, suggesting that the picket line be moved down to the gangway. Jardine refused,

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this person talked to Parisi. He testified that Parisi told him (Jardine) not to stop any trucks from going in and that he replied that he was complying with those instructions. He denied ever telling anyone that "he was out of his mind" in connection with a request to move the pickets. He denied having had any other conversation, or making any other statements, as testified by Shallow.

I was not favorably impressed by the veracity of Parisi from his demeanor on the stand. In addition, he was frequently evasive and at times fenced with the General Counsel. I have previously indicated (see footnote 3, *supra*), that I do not regard Jardine as a credible witness. Under the circumstances, I do not credit the testimony of Parisi and Jardine to the extent that it conflicts with that of Shallow, as set forth in the text.

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[7] Although Moran did not know Jardine's name, he was referred by one of the pickets to the person in charge who, in turn, stated that he was in charge of the picket line. In addition, Moran identified Jardine on the witness stand to my complete satisfaction. I find that Moran did speak to Jardine on the occasion related in the text.

stating that they were going to picket across the front of the pier.[8]

E. *The illegality of Respondent's conduct.*

Respondent concedes that it had no connection with any of the Employers herein involved. In order to find Respondent's conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act, the following three elements must exist: (1) There must be inducement or encouragement of any individual employed by any person engaged in commerce or in an industry affecting commerce to strike or to engage in a work stoppage; (2) there must be threats of coercion or restraint of any such person engaged in commerce or in any industry affecting commerce; and (3) an object in each case must be forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

Respondent does not seriously dispute the existence of the first element. Counsel for Respondent admitted at the oral argument that "there is no serious quarrel that work did not go on during this period of time." He further admits in his brief that longshoremen, truckers, clerks and checkers, all union members, refused to cross the picket line. The result was that the *George S. Long* and the SS *Portmar* could not be loaded or unloaded. The preponderance of the record evidence clearly warrants the findings, which I herein made, (1) that Respondent's agents knew that this would be the effect of its picketing at the entrances to Pier 27 and (2) that the picketing was intended to be Respondent's signal to union members employed by

[8] The findings in this paragraph are based on the credited testimony of Robert Moran, who impressed me as a trustworthy witness. Jardine admitted being asked at the pier by someone to remove the pickets so that the checkers could go through. He testified that he replied that they could go through and that no one was stopping them. Parisi denied ever talking to Moran. For reasons previously indicated, I do not credit the testimony of Jardine and Parisi to the extent that it may conflict with that of Moran, set forth in the text.

employers using Pier 27 to cease work. I therefore find that Respondent's picketing and Picket Captain Jardine's statement on June 14 to Charles Donahue, the receiving clerk of Hinkins Steamship Agency, to the effect that he (Jardine) objected to the Company receiving freight on the south side of Pier 27,[9] induced and encouraged a work stoppage by individuals employed by persons engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4)(i) of the Act and outside the free speech protection asserted by Respondent.[10]

With respect to the second element, it is conceded that all the employers involved were clearly neutrals and that there is no question of any primary employer being at the situs of the picketing at Pier 27. Under these circumstances, I find, in accordance with the Board's consistent holdings,[11] that the picketing at Pier 27 also constituted restraint and coercion of persons engaged in commerce or in an industry affecting commerce within the meaning of Section 8(b)(4)(ii) of the Act. I also find that the conduct of Picket Captain Jardine and Port Agent Parisi[12] in refusing to move the picket line to enable union employees to enter the pier, when requested to do so by Manager Shallow of Hinkins Steamship Agency and by District Agent Moran of Calmar, constituted, under all the circumstances, further restraint and coercion within the meaning of Section 8(b)(4)(ii) of the Act.

The third element—an object, etc.—requires a little more detailed discussion. Counsel for Respondent concludes in his brief that the picketing was purely informational and solely for a lawful objective. Thus, counsel argues in his

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[9] I find that as Respondent's patrolman and picket captain at Pier 27, Jardine was an agent of Respondent within the meaning of Section 2(13) of the Act and that Respondent is therefore responsible for his conduct.

[10] See, e.g., *International Brotherhood of Electrical Workers, Local 501* v. *N. L. R. B.*, 341 U. S. 694, 701-704.

[11] *General Teamsters Local No. 324 etc. (Curly's Dairy, Inc., et al.)*, 144 NLRB No. 77, and cases cited therein.

[12] I find that Parisi is also an agent of Respondent within the meaning of Section 2(13) of the Act and that Respondent is liable for his conduct.

brief that "the MEBA picketing of the *Maximus* effectively prevented cargo operations on that vessel and constituted a definite threat to the jobs and economic security of the NMU men employed on the ships," that Respondent believed that "the rank and file of MEBA members did not support this course of conduct" and "would oppose it," and that in order to protect the jobs of its members Respondent "sought to appeal directly to the MEBA rank and file and to the public in general to advise them of the true nature of the dispute in the hope that their own consciences and self-respect as trade unionists and responsible citizens might lead them to withdraw all support from the illegal picketing of the *Maximus* and to prevail upon the MEBA leadership to stop the picketing."

The Board, in a recent supplemental decision,[13] had occasion to point out that picketing or a strike "may have a number of objects"; that "some may be ultimate, others alternative, conditional, or immediate"; that, "however denominated—ultimate, alternative, conditional or immediate—if the object is proscribed by a statute, a strike [or picketing] to achieve it is unlawful"; that there may be both lawful and unlawful objectives in the same case; and that if the immediate objective is to cause a cessation of business between two employers as a means of exercising pressure to achieve the ultimate lawful object, then the picketing or strike is unlawful. This is so because, the Board further pointed out, the Supreme Court has noted that Section 8(b)(4) forbids certain conduct which has "an" object that is proscribed.[14]

In the instant case, Respondent's ultimate object was to get the MEBA rank-and-file members to prevail upon the MEBA leadership to stop the picketing of the *Maximus* and thereby protect the jobs of Respondent's members on that ship. This is a lawful object, not proscribed by Section

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[13] *Retail Clerks Union, Local 770, et al. (Food Employees Council, Inc.)*, 145 NLRB No. 33.

[14] *N. L. R. B. v. Denver Building and Construction Trades Council*, 341 U. S. 675, 689.

8(b)(4). However, Respondent's further contention that it sought to accomplish this object solely by appealing directly to MEBA rank-and-file members and to the public is not borne out by the record. Although the standard used for choosing the picketing site was the presence of a MEBA crew aboard a vessel at a particular pier, the picket signs were not addressed to MEBA members. On the contrary, the leaflets passed out by the pickets were addressed "To all union men." No request was ever made to board the ships to talk to the MEBA members. There was no picketing of MEBA headquarters in Philadelphia. Nor were there any attempts to inform the public through any of the other mass media or in any other locations. On the other hand, the record clearly establishes that one of Respondent's objects was to cause a work stoppage in the port in connection with vessels which had MEBA crewmen. This is readily apparent from the timing and location of the pickets at the entrances to Pier 27, the refusals of Port Agent Parisi and Picket Captain Jardine to comply with employer requests to move the picket line so that union employees could enter the pier without crossing the line to perform work for the MEBA berthed vessels, the *George S. Long* and the SS *Portmar*, and the extension of the picketing to the south side of Pier 27 when no vessel was berthed there so that union employees would not work on the receiving of cargo for the *George S. Long*, all as previously found. Upon consideration of all the foregoing and the entire record as a whole, I am convinced and find that Respondent's immediate objective was to cause a cessation of work in the Port of Philadelphia in connection with any vessel which had a MEBA crew as a means of exerting pressure upon the MEBA members of these vessels to achieve Respondent's ultimate lawful objective. Thus, Respondent's immediate objective of causing neutral persons to cease doing business with themselves or with any other person in connection with work to be performed for the

George S. Long and the SS *Portmar* on Pier 27 is "an" object proscribed by Section 8(b)(4)(b).

Respondent contends that the absence of any primary dispute with an employer is fatal to the General Counsel's case. I do not agree. Consistent with the broad purposes of the statute, the thrust of Section 8(b)(4) has been to prevent the disruption of business between neutrals and the absence of a primary dispute has been held to be immaterial in such a situation.[15] As the Board pointed out in adopting the Intermediate Report of Trial Examiner Leff in *United Marine Division, Local 333 (New York Shipping Association)*, 107 NLRB 686 at page 711.

> Though it is plain that primary action is to be excepted from the scope of 8(b)(4)(A) [now 8(b)-(4)(B)] there is nothing in the legislative history to warrant a conclusion that where secondary action is involved Congress intended to draw a distinction between different kinds so as to include some but not others. There is evidence, on the other hand, that Congress, with the purpose of confining the area of economic conflict in labor disputes to direct disputants, intended Section 8(b)(4)(A) to condemn all action directed against or which has the effect of injuring the business of third persons, not involved in the basic disagreement, giving rise to the conflict.

To hold otherwise would undermine the entire thrust of Section 8(b)(4)(B).[16]

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[15] See, e.g., *N. L. R. B.* v. *Washington-Oregon Shingle Weavers' (Sound Shingle Co.)*, 211 F. 2d 149 (C. A. 9), holding that any object is prohibited whether or not the union has a dispute with any other producer, processor or manufacturer. In fact, the court pointed out that "if the object is sought not because of any dispute but merely because the union dislikes the other producer for any reason or no reason, the conduct would appear even more reprehensible." See also, *Local 11, United Carpenters and Joiners of America, AFL-CIO (General Millwork)*, 113 NLRB 1084, 1086, enfd. 242 F. 2d 932 (C. A. 6).

[16] There is no merit to Respondent's further contention that the complaint should be dismissed as moot because the picketing ceased on June 20, 1963, and has never been resumed. An order is necessary to effectuate the policies of the Act and to bar the resumption of such and similar conduct.

I find that by picketing the entrances to Pier 27 where vessels of Weyerhaeuser and Calmar were moored and by the conduct of Respondent's agents, Louis Parisi and Francisco Jardine, all as previously detailed, Respondent has induced and encouraged individuals employed by Weyerhaeuser, Calmar, Nacirema, and Hinkins to engage in a strike or a refusal in the course of their employment to perform services for their respective employers, and has restrained and coerced the aforenamed employers, in each case with an object of forcing or requiring the aforenamed employers or persons to cease doing business with each other or with any other person on Pier 27 in the Port of Philadelphia. By such conduct Respondent has violated Section 8(b)(4)(i) and (ii)(B) of the Act.

IV. The effect of the unfair labor practices upon commerce.

The activities of Respondent set forth in section III, above, occurring in connection with the operations of the Companies set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy.

Having found that Respondent engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.[17]

[17] Complaints have also been issued against Respondent in two additional cases arising out of the *Maximus* dispute. In one (Houston Maritime Association, Inc., 23-CC-125, 126, 127), a decision was issued on December 23, 1963, by Trial Examiner Sidney D. Goldberg, who found that Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by its picketing of the ports of Houston and Galveston, Texas. The second case (Delta Steamship, 15-CC-189, 190), was heard in New Orleans, Louisiana, by Trial Examiner John Funke, who has not yet issued his decision. When all three cases are considered by the Board, it will then be in a position to determine whether the geographic scope of the Recommended Order should be broadened in the instant case.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW.

1. National Maritime Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Weyerhaeuser Lines, a division of the Weyerhaeuser Company, Calmar Steamship Corporation, Nacirema Operating Co., Inc., and Hinkins Steamship Agency are each engaged in commerce or in an industry affecting commerce within the meaning of Sections 2(6) and (7) and 8(b)(4) of the Act.

3. Louis Parisi, Respondent's port agent at the Port of Philadelphia, and Francisco Jardine, Respondent's patrolman and picket captain of the picketing at Pier 27 in that port, are agents of Respondent within the meaning of Section 2(13) of the Act.

4. By picketing the entrances to the pier where vessels of Weyerhaeuser and Calmar were moored and by the conduct of Respondent's agents, Louis Parisi and Francisco Jardine, as set forth in section III, C and D, *supra*, Respondent has induced and encouraged individuals employed by Weyerhaeuser, Calmar, Nacirema, and Hinkins to engage in a strike or a refusal in the course of their employment to perform services for their respective employers, and has restrained and coerced the aforenamed employers, in each case with an object of forcing or requiring the aforenamed employers or persons to cease doing business with each other or with any other person at Pier 27 in the Port of Philadelphia.

5. By the conduct set forth in the preceding paragraph, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER.

Upon the basis of the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby recommend that the Respondent, National Maritime Union of America, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from picketing any entrance to a pier in the Port of Philadelphia, Pennsylvania, where vessels of Weyerhaeuser Lines, a division of the Weyerhaeuser Company, and Calmar Steamship Corporation are docked or moored, or in any other manner inducing or encouraging any individual employed by Weyerhaeuser, Calmar, Nacirema Operating Co., Inc., or Hinkins Steamship Agency, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing or restraining any of the aforenamed employers or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require any of the aforementioned employers or any other person to cease doing business with any other person.

Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Post in conspicuous places in Respondent's business offices, meeting halls, and all places where

notices to members are customarily posted, copies of the notice attached hereto marked "Appendix A."[18] Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for the Fourth Region for posting by each of the Employers named in the preceding paragraph, who are willing, at all places where notices to their respective employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 20 days from the date of receipt of this Decision and Recommended Order what steps the Respondent has taken to comply herewith.[19]

Dated at Washington, D. C.

LOUIS LIBBIN
Trial Examiner

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[18] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER," in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[19] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX A

NOTICE PURSUANT TO THE RECOMMENDED ORDER OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT establish or maintain a picket line at any entrance to a pier in the Port of Philadelphia, Pennsylvania, where vessels of Weyerhaeuser Lines, A Division of the Weyerhaeuser Company, or Calmar Steamship Corporation are docked or moored, nor in any other manner induce or encourage any individual employed by Weyerhaeuser, Calmar, Nacirema Operating Co., Inc., or Hinkins Steamship Agency, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, articles, or commodities, or to perform any services, NOR WILL WE threaten, coerce, or restrain any of the aforesaid employers or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require any of the aforenamed employers or any other person to cease doing business with any other person.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO
(Labor Organization)

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Dated..... By.....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 1700 Bankers Security Building, Walnut and Juniper Streets, Philadelphia, Pennsylvania 19107 (Tel. No. 735-2612), if they have any question concerning this notice or compliance with its provisions.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO and HOUSTON MARITIME ASSOCIATION, INC.	Case No. 23-CC-125
NATIONAL MARITIME UNION OF AMERICA, AFL-CIO and GULF ATLANTIC WAREHOUSE COMPANY	Case No. 23-CC-126
NATIONAL MARITIME UNION OF AMERICA, AFL-CIO and DELTA STEAMSHIP LINES, INC.	Case No. 23-CC-127

DECISION AND ORDER.

On December 23, 1963, Trial Examiner Sidney D. Goldberg issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in his Decision attached hereto. Thereafter, the General Counsel filed a brief in support of the Trial Examiner's Decision, and Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted below.

The complaint alleged that the National Maritime Union (NMU) violated Section 8(b)(4)(i) and (ii)(B) by its activity in June 1963,[1] at certain locations in the Ports of Houston and Galveston, Texas.[2]

As set forth in detail in the Trial Examiner's decision, the facts show that on June 17, NMU pickets appeared outside the gates of the municipal wharves operated by the Harris County-Houston Ship Channel Navigation District and the marine terminal facilities operated by the Gulf Atlantic Warehouse Company. On the same day, pickets were placed in Galveston at Pier 35, where the SS. *Del Alba*, a vessel owned by Delta Steamship Lines, Inc., was moored to permit unloading of cargo destined for the Imperial Sugar Company. The picketing continued until June 20, when agreement was reached on the loading of the *Maximus*. During the picketing, waterfront operations ceased at all three locations because longshoremen, stevedores, and warehousemen (represented by the ILA and employed by marine

[1] Unless otherwise indicated all dates refer to 1963.

[2] The conduct in issue was an outgrowth of the NMU's dispute with the Seafarers' International Union (SIU) and the latter's ally, the Marine Engineers Beneficial Association (MEBA), involving MEBA's picketing of the SS. *Maximus* in the Port of Philadelphia. The *Maximus* was manned by members of the NMU and its affiliate, the Brotherhood of Marine Officers. MEBA's picketing of the *Maximus* prevented loading operations, and idled the ship in Philadelphia until June 21, the day after the dispute was finally resolved.

The NMU's picketing in Houston and Galveston was part of a retaliatory effort against MEBA's action in Philadelphia. The Board has simultaneously considered two additional cases involving related NMU picketing in other ports. See *National Maritime Union of America (Delta Steamship Lines, Inc.)*, 147 NLRB No. 147, involving NMU action in New Orleans, Louisiana; and *National Maritime Union of America (Weyerhaeuser Lines)*, 147 NLRB No. 144, covering like action in the Port of Philadelphia.

terminal operators, steamship agents, and stevedore contractors), refused to cross or perform work behind the picket lines.[3]

1. The Trial Examiner found, and we agree, that Respondent's picketing at the facilities operated by the Harris County-Houston Ship Channel Navigation District and the Gluf Atlantic Warehouse Company, in Houston, and at Pier 35, in Galveston, induced and encouraged individuals employed by steamship agents, stevedore companies, and marine warehouse operators to strike and to refuse in the course of their employment to perform services for their employers within the meaning of Section 8(b)(4)(i), and that said picketing constituted coercion and restraint of the stevedoring companies, marine terminal operators, and steamship owners and agents[4] engaged at the picketed locations within the meaning of Section 8 (b)(4)(ii) of the Act.[5]

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[3] The work stoppages caused by the picketing included stevedore functions, consisting of the loading and unloading of cargo between the ships and the docks by stevedore contractors engaged by either the owner of the vessel, the steamship agent, or the consignee of the cargo; and warehouse operations, consisting of the loading and unloading of cargo between the docks and rail cars (or trucks) by the operators of the terminals under agreement with either the carrier or the consignee of the cargo.

[4] We adopt the Trial Examiner's findings that Harris County-Houston Ship Channel Navigation District; Gulf Atlantic Warehouse Company; and Delta Steamship Lines, Inc., are employers or persons engaged in commerce within the meaning of the Act. In adopting the Trial Examiner's finding that the Houston Maritime Association (and its employer-members) are engaged in commerce, we also rely upon the evidence that said Association engages in collective bargaining on behalf of its employer-members. We further find that, in view of the close and intimate relationship between stevedore operations and interstate and foreign seaborne commerce, the stevedore companies engaged in loading and unloading ships at the picketed locations are engaged in an industry affecting commerce within the meaning of the Act. *Sheet Metal Workers, International Association, Local 299 (S. M. Kasner & Sons)*, 131 NLRB 1196, 1197-1199.

[5] In adopting the Trial Examiner's finding that Respondent's picketing constituted coercion and restraint within the meaning of 8(b)(4)(ii), we rely upon our conclusion in paragraph 2, *infra*, that the picketing was for an object of forcing or requiring a general cessation of business between all persons engaged at the picketed locations. See e.g., *Plumbers and Pipefitters Local 142, AFL-CIO (Piggly Wiggly)*, 133 NLRB 307, 314.

2. The Trial Examiner, in concluding that the picketing was for an object within the ban of Section 8(b)(4)(B), noted generally that the picket line is a well known device used by labor organizations to enlist the aid of other employees to its cause, and then concluded that in setting up its picket line, Respondent must be deemed to have known—and intended—the foreseeable consequences of its conduct: that the stevedores, longshoremen and other employees would stop at the picket line and not proceed to their work."

Respondent excepts to this finding, contending that its activity was constitutionally protected as solely informational in purpose. In support, it argues that the record is insubstantial to support a finding of an unlawful object, and that at best such as the "foreseeability rule" applied by the Trial Examiner has no place in the interpretation and application of Section 8(b)(4)(B). Respondent therefore argues that the General Counsel has failed to meet his burden of proving a "cessation of business objective."

Thus, the sole issue before us is whether the record establishes that the picketing had an unlawful object. For, as the Respondent implicitly concedes, if such an object is evidenced by the record, neither the First Amendment of the Constitution,[6] nor the fact that the picketing was *also* informational in purpose[7] may excuse its conduct.

On our view of the record, we agree with the Trial Examiner that Respondent's picketing had an object of forcing or requiring the cessation of stevedoring and warehousing activities that occurred at the picketed sites. In so finding, we concur in the Trial Examiner's views as to

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[6] See *International Brotherhood of Electrical Workers* v. *N. L. R. B.*, 341 U. S. 694, 705.

[7] It is well settled that it is not necessary to find that the *sole* object of a union's conduct was to force or require a cessation of business. *N. L. R. B.* v. *Denver Building Trades*, 341 U. S. 675 at 688, *International Longshoremen's Association, etc. (Board of Harbor Commissioners)*, 137 NLRB 1178, 1184, enfd. F. 2d (C. A. 3, May 4, 1964).

the "signal effect of the picket line,[8] but also rely upon further evidence which plainly establishes Respondent's intention of denying neutral employers the work force on which their operations depended, all for the purpose of causing a general cessation of operations behind the picket lines.

Thus, the record shows that the waterfront sites chosen for picketing were exclusively occupied by employers or persons having no labor dispute with Respondent.[9] Leaflets, distributed from the picket lines, were addressed "To All Union Men" and explained that MEBA was picketing the *Maximus* because "they know you won't cross an honest picket line so they figure they can tie up anything anytime even though their picket line is phony," and further provided as follows:

> We want the shipowners and the stevedoring companies to know that if they can't stand up to outfits that try to put pressure on them in a phony beef, then they're really going to be in trouble. That's the only way we're going to get stability on the waterfront.
>
> That's what we're out for today. It's your fight as well as ours. An honest picket line is organized labor's time-honored and respected weapon. That is

[8] The effect of the picket line in the maritime-longshore industry as a signal that all union members refuse to cross is borne out by the incident at Pier 35 in Galveston where neutral employees who had previously refused to cross the picket line, and who were scheduled to perform work unrelated to the unloading of the *Del Alba*, reported for work after the NMU removed its pickets from the entrances normally used by these employees.

[9] Although the record tends to show that Respondent's conduct was in furtherance of an inter-union controversy, rather than a dispute with an employer, the Board has held that the existence of a dispute with an employer is not a precondition for application of the Act's boycott provisions. See *Local 1355, International Longshoremen's Association (Maryland Ship Ceiling Company)*, 146 NLRB No. 100, enf. den. on other grounds F. 2d (C. A. 4, May 21, 1964). To the extent that the instant case relates to a dispute between labor organizations concerning the representation of employees, an underlying labor dispute is involved, and our decision herein presents no conflict with the views of the Fourth Circuit in the cited case.

> the only way any workers can stay strong. . . . This is our way of letting you know what the situation is. Together we can work this out and get some stability on the waterfront.

Even the most cursory examination of the leaflet discloses a clear appeal that union members honor Respondent's picket line and refrain from crossing it to perform their customary duties. That the resulting work stoppages were intended to be part and parcel of Respondent's campaign is further evidenced by both the handbill's reference to "trouble" for the waterfront operators and the statement of Respondent's Port Agent in Houston, after settlement of the *Maximus* dispute, that "I have just called off my pickets, and as far as I am concerned the port can get back into operation." In these circumstances, and on the record as a whole, we find that an object of Respondent's picketing was to force or require the various stevedore companies, marine warehouse operators, and steamship owners and agents at said locations to cease doing business between themselves and with other persons.[10] Accordingly, and in agreement with the Trial Examiner, we find that Respondent, in picketing the facilities operated by the Harris County-Houston Ship Channel Navigation District, and the Gulf Atlantic Warehouse Company in Houston, and at Pier 35 in Galveston, engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

ORDER.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner with the following modifications, and orders that the Respondent, its officers, agents, and representatives, shall

[10] See *United Marine Division, Local 333 (New York Shipping Association)*, 107 NLRB 686. *Miami Newspaper Printing Pressmen Local No. 46 (Knight Newspapers, Inc.)*, 138 NLRB 1346, 1353, enfd. 322 F. 2d 405 (C. A. D. C.).

abide by the terms of the Trial Examiner's Recommended Order as modified below.

1. The Recommended Order is modified by deleting paragraph 1(a) and substituting the following as paragraphs 1(a) and 1(b):

   (a) Inducing or encouraging individuals employed in Houston or Galveston, Texas, by Houston Maritime Association, Inc., and its employer-members engaged in stevedoring operations by Harris County-Houston Ship Channel Navigation District, by Gulf Atlantic Warehouse Company, and by any other person engaged in commerce or an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require any of the foregoing persons to cease doing business with each other or with any other person.

   (b) Threatening, coercing, or restraining in the Ports of Houson or Galveston, Texas, said persons and Delta Steamship Lines, Inc., and other steamship owners and agents who are members of the Houston Maritime Association, or any other person engaged in the commerce or an industry affecting commerce where an object thereof is to force or require any of said persons to cease doing business with each other or any other person.

2. The Recommended Order is further modified by substituting, for paragraph 2(b), the following:

   (b) Mail signed copies of the notice to the Regional Director for the Twenty-third Region, for post-

ing by Houston Maritime Association and its employer-members, by Harris County-Houston Ship Channel Navigation District, Gulf Atlantic Warehouse Company, and Delta Steamship Lines, Inc., said employers and persons being willing, at all locations in the Ports of Houston and Galveston, Texas, where notices to their employees are customarily posted.

3. The notice attached hereto marked "Appendix" is substituted for the notice recommended by the Trial Examiner.

Dated, Washington, D. C.
June 30, 1964

(SEAL)

.....

FRANK W. McCULLOCH,
Chairman

.....

BOYD LEEDOM,
Member

.....

JOHN H. FANNING,
Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES OF

HOUSTON MARITIME ASSOCIATION, INC., AND ITS EMPLOYER-MEMBERS; HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT; GULF ATLANTIC WAREHOUSE COMPANY; DELTA STEAMSHIP LINES INC., and all other persons engaged in commerce or an industry affecting commerce in the Ports of Houston and Galveston, Texas.

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage individuals employed in the Ports of Houston and Galveston, by any of the above-named persons or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, articles, or commodities, or to perform any services where an object thereof is to force or require any of the aforesaid persons to cease doing business with each other or with any other person.

WE WILL NOT threaten, coerce, or restrain in the Ports of Houston and Galveston any of the above-named persons, or any other person engaged in commerce or in an industry affecting commerce where an object thereof is to force or require said persons to cease doing business with each other or any other person.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO
(Labor Organization)

Dated..... By.....
(Representative) **(Title)**

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston, Texas 77002 (Tel. No. CApitol 8-0611, Ext. 296), if they have any question concerning this notice or compliance with its provisions.

TXD-610-63
Houston, Tex.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO and HOUSTON MARITIME ASSOCIATION, INC.	Case No. 23-CC-125
NATIONAL MARITIME UNION OF AMERICA, AFL-CIO and GULF ATLANTIC WAREHOUSE COMPANY	Case No. 23-CC-126
NATIONAL MARITIME UNION OF AMERICA, AFL-CIO and DELTA STEAMSHIP LINES, INC.	Case No. 23-CC-127

JEROME L. AVEDON, Esq., for the General Counsel.

ARTHUR J. MANDELL, Esq. (MANDELL & WRIGHT), of Houston, Texas, for the Respondent.

ROBERT A. FELTNER, Esq., and THEODORE GOLLER, Esq. (EIKEL, FELTNER & GOLLER), of Houston, Texas, for Houston Maritime Association, Inc.

JAMES J. LOEFFLER, Esq. (FULLBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI), of Houston, Texas, for Gulf Atlantic Warehouse Company.

Before:

SIDNEY D. GOLDBERG, Trial Examiner.

TRIAL EXAMINER'S DECISION

This proceeding, under Section 10(b) of the National Labor Relations Act, as amended (29 U. S. C. Sec. 151-168; herein called the Act), was commenced by a consolidated complaint[1] alleging that the National Maritime Union (herein called NMU or the Union), by picketing and distributing handbills at the entrances to docks and piers in Houston and Galveston, had caused work stoppages by stevedoring and other employees and that this conduct, which effectively tied up these ports, was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

The Union answered, admitting the picketing and distribution of handbills, but claiming that its activities were protected by the First and Fourteenth Amendments to the Constitution of the United States and by Article 1, Section 8 of the Constitution of the State of Texas.

A hearing on the issues so raised was held before Sidney D. Goldberg, duly designated as Trial Examiner, at Houston, Texas, on September 4 and 5, 1963, at which the parties were present or represented by counsel. Briefs filed by the General Counsel and counsel for the Union have been considered.

For the reasons set forth in detail below, I find that the Union's conduct was in violation of Section 8(b)(4)(i) and (ii)(B) of the Act and that it was not protected by the constitutional provisions cited in its behalf.

Upon the entire record[2] in the case, and from my observation of the witnesses, I make the following:

Findings of Fact.

I. Respondent labor organization.

The Union admits that it is a labor organization within the meaning of the Act.

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[1] Issued by the General Counsel July 3, 1963, on charges filed June 18, 1963, and amended charges filed June 20, 1963.

[2] The transcript of testimony is corrected as set forth in Appendix A hereto.

II. The employers involved.

A. *Houston Maritime Association.*

Ships entering the port of Houston are represented—as they are in most ports where the owner or operator has no office—by steamship agents, whose function is the "general husbandry" of the ship, that is, to do on behalf of the ship everything that the owner or operator would do if it were there. The steamship agents—and the steamship lines which have offices of their own—in Houston, are members of Houston Maritime Association, a nonprofit corporation devoted to the promotion of trade through that city. The stevedoring companies operating in Houston and some steamship agents in other Texas ports are "stevedore members" or "associate members" having no vote. The annual revenues of just 1 of the 21 regular members of the Association, Biehl & Co., amount to more than $100,000. Delta Steamship Lines, referred to below, is another regular member. The Board has heretofore exercised jurisdiction over the Association.[3]

B. *Gulf Atlantic Warehouse Company.*

Although, as will be seen, most of the port facilities in Houston are operated by a municipal corporation, Gulf Atlantic Warehouse Company (herein called Gulf Atlantic) operates a marine terminal consisting of eight steamship berths, with the appurtenant cargo handling and warehouse facilities, known as the "Long Reach" docks. Its annual revenues admittedly exceed $500,000. The Board has heretofore exercised its jurisdiction over this employer.[4]

C. *Delta Steamship Line.*

Delta Steamship Lines, Inc. (herein called Delta) operates 13 vessels, flying the United States flag, engaged in

[3] 121 NLRB 389.

[4] 111 NLRB 1249; 129 NLRB 42.

commerce between the United States and foreign countries. Its annual revenues admittedly exceed $500,000.

D. *The Port of Houston.*

Respondent's activities charged herein as unfair labor practices closed down operations in the Port of Houston for several days. According to the Department of Commerce publication "Waterborne Foreign Trade Statistics" (FT 985), the value of cargoes—in foreign trade only and with several categories excluded—passing through the Port of Houston in 1962 was $357 million in-bound and over $864 million out-bound.

III. The unfair labor practices.

A. *Background.*

1. The physical layout at Houston.

The Port of Houston consists of the upper 4 miles of the Houston Ship Channel which runs into Galveston Bay, about 25 miles downstream. The principal wharves and other port facilities are located on both sides of the channel on a 2-mile stretch at its upper end and includes an enlarged area, called the "Turning Basin." This stretch runs approximately from southeast to northwest.

The port area is closed off from the city by a fence and by railroad tracks on the west and northeast sides which meet at a point north of the Turning Basin. The four gates which afford entry through the fence into the port area are all at grade crossings over the tracks on the northeastern side. These gates, numbered (from southeast to northwest) 2, 3, 7, and 8, give access to the Port from Clinton Drive, a highway running parallel with and outside the fence and tracks. Gates 2, 6 and 7 lead to the wharves and other facilities on the northeast side of the channel, which is locally referred to as the "north" side. Gate 8, the most westerly one, is at the intersection of the two

sets of railroad tracks and through it, by means of other roads, access is gained to the wharves and facilities on the Turning Basin and on the "south" side of the channel. There are additional wharves at Manchester, about a mile downstream from the principal section of the Port.

Almost all of the wharves, warehouses and other facilities of the Port of Houston are operated by Harris County-Houston Ship Channel Navigation District (herein referred to as the Navigation District) a municipal corporation. As described above, the "Long Reach" docks, however, are operated by Gulf-Atlantic and these are located on the "south" side of the Ship Channel.

2. The work pattern.

A ship entering the Port of Houston is, as stated, under the general husbandry (i.e., management) of the owner, if it has an office there; otherwise, of the shipping agent. The shipping agent or owner arranges with a terminal operator for the berthing of the ship; with a mooring company to get the ship to its berth and with a stevedoring company to unload it. The function of a marine carrier is usually complete with the deposit of the cargo on the docks and arrangements for its further transportation are generally made by the consignee through the terminal operator. According to its instructions, the terminal operator ships the freight by rail or truck or holds it in its warehouse pending further shipment or other disposition.

The stevedoring companies obtain their employees, as needed, from the several Houston locals of the International Longshoremen's Association (herein called ILA). The terminal operators, whose need for employees[5] also fluctuates as cargo is deposited on their docks for movement into the warehouse or for loading on trucks or rail cars, also place daily orders for help with appropriate ILA locals.

[5] Above a staff of permanent employees.

B. *The picketing at Houston.*

The facts in this case are practically undisputed. By its answer, Respondent admitted that, on June 17, 1963,[6] "and for some days thereafter" its members picketed the docks and piers in Houston and Galveston and passed out leaflets as alleged in the complaint. The evidence shows that, shortly after 7 a.m. on June 17, pickets appeared in Houston at Gates 2, 6, and 8, to the port area. These are the gates through which the ILA members employed by the stevedoring companies and the terminal operators are required to pass in going to work on the docks and ships on the north side. The Navigation District had ordered, from the appropriate ILA locals, 188 men for warehouse and dock work on the north side, instructing them to report at 8 a.m. Customarily using Gates 2 and 8, they came as far as the picket lines there and refused to cross. A few men who had reported for work at 7 a.m. left at 8 a.m. Although there were at least eight ships berthed at the piers on the north side, neither the warehousemen ordered by the Navigation District nor the stevedores ordered by the stevedoring companies reported for work but stood around for a time near the picket lines at the gates. At about noon on the 17th, the pickets moved from Gate 6 to Gate 7.

On June 18 and 19, the picketing on the north side continued all day at Gates 2, 7 and 8. Although, on both days the Navigation District ordered warehousemen from ILA locals for work on those docks, none reported. Sometime during the day on the 20th, the pickets were removed under circumstances to be described and work on the ships and docks was resumed.

At the Long Reach docks on the south side, the Gulf Atlantic terminal employees reported for work on June 17 before 8 a.m. There were no pickets at the gates at that time but they were there at noon. After leaving for lunch, the longshoremen did not return to work. A few Gulf-Atlantic employees who did not leave the premises for

[6] All dates herein, unless otherwise noted, are in 1963.

lunch continued to work but neither Gulf-Atlantic nor stevedoring employees reported for work on the 18th, 19th, or 20th while the picketing continued.

On the morning of June 18 there were pickets at the gate to the Manchester docks and operations there, also, were halted by the failure of employees to report for work.

The pickets wore placards reading as follows:

INFORMATION PICKETING
M. E. B. A. ENGINEERS
INTERFERE WITH
EMPLOYERS WHO
LAWFULLY RECOGNIZE N. M. U.

They also distributed handbills which were addressed: "To All Union Men" and began: WE ARE PICKETING TO STOP DISRUPTION ON THE WATERFRONT": The handbills then described a situation in the Port of Philadelphia involving the S/S *Maximus* and it accused MEBA (Marine Engineers Beneficial Association) and SIU (Seamen's International Union) of "attempting to harass companies which have legitimate collective bargaining agreements with the NMU." It was signed, in the name of Respondent, by Joseph Curran, its president.

Testimony that the purpose of the picketing was "informational" was given by Kirby McDowell, Respondent's Port Agent at Houston. He also testified that the pickets were instructed not to attempt to stop anyone from crossing the picket line.

C. *The picketing at Galveston.*

On Sunday June 16, Delta's S/S *Del Alba* tied up at Pier 35 in Galveston carrying a cargo of raw sugar from Hawaii. The sugar was consigned to Imperial Sugar Company which has unloading and warehousing facilities on the pier. Early in the morning on the 17th there were pickets across the shore end of the pier and the members of ILA employed by the stevedoring company to unload the sugar

refused to cross it and go to work. At about noon on the 17th the pickets moved to one side of the docks to permit construction and maintenance employees of Imperial Sugar to go to work without crossing the picket line but the pickets remained at the side of the dock where the *Del Alba* was moored during the 17th and 18th and no unloading work was done. Respondent's Port Agent at Galveston admitted that other piers in Galveston were picketed for a short time.

D. *Other activities.*

In connection with its picketing at both Houston and Galveston, Respondent distributed the handbills described. According to its Port Agent in Galveston, Respondent also distributed these handbills in front of the MEBA office in Galveston but did not picket there. He also testified that he had given instructions that the handbills were to be distributed anywhere along the waterfront where marine personnel might receive them. In Houston, however, Respondent's Port Agent testified that there was no picketing except at the pier entrances.

Some time about noon on the 20th, Kirby McDowell, Respondent's Port Agent at Houston, announced to newspaper reporters in his office that he had received a telephone call from Respondent's main office in New York informing him that the Secretary of Labor had arranged a settlement of the dispute in Philadelphia that he (McDowell) had "pulled his pickets off" and "as far as he was concerned, the port could get back into operations." The pickets left their posts at Houston and Galveston at about the same time on the 20th and work was resumed.

E. *Contentions of the parties.*

On the foregoing facts, the General Counsel contends that Respondent's activities violated Section 8(b)(i)(B) and (ii)(B) of the Act in inducing the longshore employees to engage in a strike or refusal to transport or handle goods

in the Ports of Houston and Galveston and in coercing persons engaged in commerce there, and that Respondent conducted such activities with an object of forcing these persons to cease transporting products in commerce or doing business with others engaged in commerce.

Respondent, although it admits the conduct outlined above and concedes that it resulted in work stoppages, contends that such conduct was not in violation of the Act for two reasons. First: that there is no proof that such work stoppages were "an object" of its conduct. Second: that on the basis of the matters which it offered to prove involving the Seamen's International Union, the Marine Engineers Beneficial Association and other unions and persons, as manifested in the dispute over the loading of the S/S *Maximus* in the Port of Philadelphia, the purpose of its picketing was "to advise the rank-and-file members of the MEBA that their union was being used as a dupe by the SIU" and that such picketing is constitutionally protected.

F. *Conclusionary findings.*

The representatives of Respondent admitted that the picket lines were set up and removed pursuant to instructions from Respondent's main office in New York and that the wording of both the picket signs and the leaflet were supplied by that office. The leaflet, although condemning in general the tactics of SIU and MEBA, bases its argument almost entirely on the situation involving the loading of the S/S *Maximus* in Philadelphia. It is clear, therefore, that Respondent's activities in Houston and Galveston were based upon the situation in Philadelphia. From the testimony of several witnesses and the failure of Respondent to adduce any evidence to the contrary, it appears that Respondent had no labor dispute with any of the employers in Houston or Galveston affected by the picketing herein. The record is also devoid of proof that any of the employers involved in the Philadelphia dispute was present in the Ports of Houston or Galveston during the picketing.

The circumstances in this case, therefore, are slightly different from the usual one in which the Union's dispute with a primary employer is clear and the relationship between that employer and those affected by the alleged unlawful activities is easily recognizable.

Section 8(b)(4)(i) and (ii)(B), however, like its predecessor Section 8(b)(4)(A) are not premised upon the presence of such elements. As stated by the Supreme Court in the *Sand Door* case:[7]

> The section does not speak generally of secondary boycotts. It describes and condemns specific union conduct directed to specific objectives. It forbids a union to induce employees to strike against or refuse to handle goods for their employer when an object is to force him or another person to cease doing business with some third party.

The questions to be determined herein, therefore, are these three: (1) did Respondent's picketing constitute inducement of employees to refuse to handle goods; (2) did Respondent's picketing restrain or coerce any person engaged in commerce and (3) was it an object of such inducement and coercion to force any person to cease handling or transporting products in interstate commerce or to cease doing business with any other person in commerce?

1. Inducement and coercion.

The Respondent argues that its picketing, although conducted at the gates used principally by stevedore and warehouse employees to go to work on the piers and other parts of the port area, was "informational"—intended to disclose to MEBA members the misdeeds of their officials —and, therefore, constitutionally protected.

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[7] *Local 1976, United Brotherhood of Carpenters etc.* v. *N. L. R. B.*, 357 U. S. 93, at page 98.

This argument must fail. As stated by Mr. Justice Douglas in his concurring opinion in *Bakery and Pastry Drivers etc.* v. *Wohl* (315) U. S. 769 at 776):

> Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence those aspects of picketing make it the subject of restrictive regulation.

Section 8(b)(4) of the Act represents such restrictive regulation by the Congress.[8] The constitutionality of this regulation was upheld by the Supreme Court in the following language in *N. L. R. B.* v. *Denver Building Trades Council et al.* (341 U. S. 675 at page 690):

> Finally, Section 8(c) safeguarding freedom of speech has no significant application to the picket's placard in this case. Section 8(c) does not apply to a mere signal by a labor organization to its members, or to the members of its affiliates, to engage in an unfair labor practice such as a strike proscribed by Section 8(b)(4)(A). That the placard was merely such a signal, tantamount to a direction to strike, was found by the Board.

In *International Brotherhood of Electrical Workers et al.* v. *N. L. R. B.* (341 U. S. 675 at pages 703-5), another of the four cases involving Section 8(b)(4)(A) decided the same day, the Supreme Court stated:

> To exempt peaceful picketing from the reach of Section 8(b)(4) would be to open the door to the customary means of enlisting the support of employees to bring economic pressure to bear on their employer. The Board quickly recognized that to do so would be destructive of the purpose of Section 8(b)(4). It said: "To find that peaceful picketing was not thereby proscribed would be to impute

[8] See also: *Superior Derrick Corp.* v. *N. L. R. B.*, 273 F. 2d 891, 894-6 (C. A. 5).

> to Congress an incongrous intent to permit, through indirection, the accomplishment of an objective which it forbade to be accomplished directly . . . ."
>
> • • • • • •
>
> The prohibition of inducement or encouragement of secondary pressure by Section 8(b)(4)(A) carries no unconstitutional abridgement of free speech. The inducement or encouragement in the instant case took the form of picketing followed by a telephone call emphasizing its purpose. The constitutionality of Section 8(b)(4)(A) is here questioned only as to its possible relation to the freedom of speech guaranteed by the First Amendment. This provision has been sustained by several Courts of Appeals. The substantive evil condemned by Congress in Section 8(b)(4) is the secondary boycott and we recently have recognized the constitutional rights of states to proscribe picketing in furtherance of comparably unlawful objectives. There is no reason why Congress may not do likewise.

The record in this case shows that, although McDowell testified that the picket line was put up "strictly . . . to inform the public, to inform the labor movement" that MEBA was being duped by SIU and that he knew which ships had MEBA members aboard, it is also clear that no effort was made by Respondent to direct its messages to the MEBA members but that, by picketing the gates to the port area, it was Respondent's intention to shut down the work of the entire port with discrimination. Moreover, when McDowell, who testified that he had been in the labor movement practically all of his life, was asked: "When you put a picket line at the entrance to a dock, where stevedores were scheduled to go to work, what did you expect to happen?" he answered: "I really couldn't say. I know of times that lines were respected and times lines were not

respected." Upon all of the evidence[9] I find, as a fact, that the picketing was—and was intended to be—Respondent's signal to the employees of all employers in the Port of Houston and at the dock at Galveston to cease work.

The Board has consistently held that picketing by a union, at the premises of an employer with whom it has no primary dispute, constitutes restraint and coercion within the meaning of Section 8(b)(4)(ii) of the Act.[10]

2. Respondent's object.

The somewhat unusual character of Respondent's activities and the absence of the usual type of direct evidence from which an inference can be drawn requires an examination of the facts to determine whether its activities at Houston and Galveston had as "an object":

> forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

Respondent's insistence that its picketing was "informational" and its effort to restrict assignment of its "objects" to this single function are self-serving and cannot succeed. As shown above, Respondent's agents are persons of substantial experience in the labor movement and must be regarded as familiar with the effect of a picket line. In view of the language of Mr. Justice Douglas, quoted above, that "the very presence of a picket line may induce action of one kind or another" and McDowell's admission that he knew "of times that lines were respected" it seems to be laboring the obvious to point out that the picket line is a well-recognized device used by employees

[9] Other evidence in this case supports the same conclusion. The testimony of Respondent's witnesses that such was not its purpose is rejected as inconsistent with the credible evidence.

[10] *General Teamsters Local No. 324 etc. (Curly's Dairy, Inc., et al.)*, 144 NLRB No. 77 and cases cited therein.

or their organizations to enlist the aid of other employees in their cause. Its value lies largely in the simplicity of its appeal; namely, "don't cross our picket line and we won't cross yours." It follows, therefore, that in setting up its picket line, Respondent must be deemed to have known—and intended—the foreseeable consequences of its conduct:[11] that the stevedores, longshoremen and other employees would stop at the picket line and not proceed to their work. It is similarly laboring the obvious to point out that, if its employees did not report for work, the operators and other employers could not perform the services for which they were established.

Respondent's additional argument that, because the record here shows no "primary" dispute, its activities cannot be labeled "secondary" and, therefore, unlawful, is not well founded either in fact or in law. Factually, although most of the presentation was contained in its offer of proof, which is not part of the evidentiary record, a sufficient amount of the testimony of its witnesses was accepted as "preliminary" to put into the record an outline of the dispute Respondent had with the employers and other labor organizations in the Port of Philadelphia that gave rise to its shutting down of the ports of Houston and Galveston. Moreover the leaflet, which is in evidence, describes it in detail. Nor is any such showing necessary as a matter of law (See *N. L. R. B.* v. *Washington-Oregon Shingle Weavers etc.*, 211 F. 2d 149). As stated above, the record affirmatively shows that Respondent had no dispute with any of the affected employers in the Ports of Houston and Galveston and, therefore, the cases cited by Respondent involving discussions of either primary picketing or picketing at a common situs have no application here.

The decision of the Second Circuit Court of Appeals in *Douds* v. *International Longshoremen's Association* (224 F. 2d 55), does bear some resemblance in its facts to the situation here in that it also involved union activities on a scale recklessly disproportionate to the basic dispute

[11] *Radio Officers Union etc.* v. *N. L. R. B.*, 347 U. S. 17, 45.

and which also completely immobilized a great port. The decision itself, however, was issued in reviewing the conviction of union officials for criminal contempt of an injunction and one in which the rigor of the standards applicable were necessarily affected by that factor. Insofar, however, as the reasoning of the Court may be construed as applicable here, I am of the opinion that the decision is outside the main stream of the law on this point and I would not give it an over-riding effect in this case. I am convinced that the very recent statement of the Supreme Court that "the motives of man are too complex . . . to separate" [12] is the sounder view and that it is applicable here.

In *United Marine Division, Local 333 et al.* (*New York Shipping Association*), 107 NLRB 686, the nature of the activities of the respondent labor organization also brought the business of a great port—New York—to a standstill over a dispute involving tugboats in the same harbor. The argument was made in defense that, notwithstanding its picketing was conducted in a manner that brought all activity in the port to a halt, the only objective that the union would admit entertaining was one not proscribed by Section 8(b)(4)(A). Trial Examiner Leff, whose opinion was adopted by the Board, analyzed the facts, in many respects like those involved in this case, dealt with similar defensive arguments and held that the union had violated Section 8(b)(4)(A) of the Act. His language, at pages 710 and 711, is applicable here and is so clear and persuasive that any effort to restate it—much less to improve upon it—is unlikely to succeed.

IV. The effect of the unfair labor practices upon commerce.

The activities and conduct of the Respondent National Maritime Union of America, AFL-CIO, occurring in connection with the operations of Houston Maritime Association, Inc. and its member employers, of Houston-Harris

[12] *S. E. C.* v. *Capital Gains Research Bureau, Inc. et al.*, decided December 9, 1963 (32 Law Week 4029).

County Navigation District, of Gulf Atlantic Warehouse Company, of Delta Steamship Lines and of other employers or persons engaged in commerce in the Ports of Houston and Galveston, described in section I, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, between the States and foreign countries and lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy.

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to remedy the unfair labor practices and otherwise effectuate the policies of the Act.

Conclusions of Law.

1. Respondent is a labor organization within the meaning of the Act.

2. Houston Maritime Association, Inc. and its member employers, Houston-Harris County Navigation District, Gulf Atlantic Warehouse Company, Delta Steamship Lines, Inc. and the other employers or persons engaged in commerce in the Ports of Houston and Galveston are employers or persons engaged in commerce within the meaning of the Act.

3. By inducing and encouraging employees of Houston Maritime Association, Inc. and its member employers, of Houston-Harris County Navigation District, of Gulf Atlantic Warehouse Company, of Delta Steamship Lines, Inc. and of the other employers or persons engaged in commerce in the Ports of Houston and Galveston to engage in strikes or refusals in the course of their employment to perform services, with the object of forcing said employers and persons to cease doing business with each other and with other employers and persons engaged in commerce,

the Respondent has engaged, and is engaging, in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B), and Section 2(6) and (7) of the Act.

4. By threatening, coercing and restraining said employers and persons, with an object of requiring them to cease doing business with each other and with other employers and persons engaged in commerce, the Respondent has engaged, and is engaging, in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)-(ii)(B), and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, it is recommended that National Maritime Union of America, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in or inducing or encouraging individuals employed by Houston Maritime Association, Inc. and its member employers, by Houston-Harris County Navigation District, by Gulf Atlantic Warehouse Company, by Delta Steamship Lines, Inc. and by other employers or persons engaged in commerce in the Ports of Houston or Galveston, or any other person engaged in commerce, or in an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require any of the foregoing employers or persons engaged in commerce or any other employer or person, to cease doing business with each other.

2. Take the following affirmative action, which is hereby found necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in each of the Respondent's business offices, meeting halls, and other

places in Houston and Galveston, Texas, where notices to members are customarily posted, copies of the notice attached hereto and marked Appendix B.[13] Copies of said notice, to be furnished by the Regional Director for the Twenty-third Region, after being duly signed by an authorized representative of said Respondent, shall be posted by said Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days. Reasonable steps shall be taken by said Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Mail signed copies of the notice to the Regional Director for the Twenty-third Region, for posting by Houston Maritime Association, Inc. and its member employers, by Houston-Harris County Navigation District, by Gulf Atlantic Warehouse Company, by Delta Steamship Lines, Inc. and by the other employers or persons engaged in commerce in the Ports of Houston and Galveston, said employers or persons being willing, at all locations where notices to their employees are customarily posted.

(c) Notify said Regional Director, in writing, within 20 days from receipt of this Decision and Recommended Order, what steps have been taken to comply therewith.[14]

Dated at Washington, D. C.

SIDNEY D. GOLDBERG
Trial Examiner

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[13] In the event that this Recommended Order should be adopted by the Board, the words, "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of the United States Court of Appeals, the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[14] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX A

Corrections to Transcript of Testimony

Page	Line	Words in Transcript	Amended to Read
8	2	moor drydocks	Moore Dry Dock
11	1	Nitrous	Mattress
21	2	does Counsel	Counsel does
41	8	placque	plat
50	25	counsel for cross-examining	cross-examining counsel
52	9	what District owns it	what the District owns
53	2	objection	object
79	3	contract, the owner	contract between the owner
	6	building trades	Building Trades case
	9	warranted	wanted
94	25	inefficient	insufficient
96	13	business from Seasons	business with was Seasons
148	4	are	
149	10	something, if I may use slang word. You	something. If I may use a slang word. You
152	18	Maybe that, we	it may be that we
	21	explaining coherent to me	explaining it coherently to me
158	11	made	mad
190	8	with the case	with a spoon
195	9	Trial Examiner	The Witness
254	2	not the language	if not the language
265	9	an essentially important city, and it is important	an essentially port city is important

APPENDIX B

NOTICE

to all employees of

MEMBERS OF HOUSTON MARITIME ASSOCIATION, INC.

HOUSTON-HARRIS COUNTY NAVIGATION DISTRICT
GULF ATLANTIC WAREHOUSE COMPANY
DELTA STEAMSHIP LINES, INC.

and of all other employers or persons engaged in commerce in the Ports of Houston and Galveston

Pursuant to
THE RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT engage in, or induce or encourage individuals employed by any of the above-named employers or persons engaged in commerce or in an industry affecting commerce to engage in, strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, articles, or commodities, or to perform any services where an object thereof is to force or require any of the aforesaid employers or persons to cease doing business with each other or with any other employer or person engaged in commerce in the Ports of Houston or Galveston.

WE WILL NOT threaten, coerce or restrain any of the above-named employers or persons, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require the said employers or persons to cease doing business with any other person engaged in commerce or in an industry affecting commerce.

NATIONAL MARITIME UNION
OF AMERICA, AFL-CIO
(Labor organization)

By:..... .....
(Representative) (Title)

Dated:.....

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston, Texas 77002 (Tel. No. Capitol 8-0611, Ext. 296), if they have any question concerning this notice or compliance with its provisions.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

WASHINGTON, D. C.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *and* HOUSTON MARITIME ASSOCIATION, INC., NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,	Case No. 23-CC-125
and GULF ATLANTIC WAREHOUSE COMPANY, NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,	Case No. 23-CC-126
and DELTA STEAMSHIP LINES, INC.	Case No. 23-CC-127

ERRATUM

The Recommended Order issued herein December 23, 1963, is hereby amended by inserting, following paragraph 1(a) thereof, the following paragraph:

> (b) Threatening, coercing or restraining employer members of Houston Maritime Association, Inc., Houston-Harris County Navigation District, Gulf Atlantic Warehouse Company, Delta Steamship Lines, Inc., or any other employers or persons engaged in commerce in the Ports of Galveston or Houston, with an object of requiring them, or any of them, to cease doing business with each other or with any other employer or person engaged in commerce.

SIDNEY D. GOLDBERG,
Trial Examiner.

Dated: December 30, 1963.

BRIEF FOR PETITIONER

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 18789

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION TO REVIEW AND CROSS-APPLICATION TO ENFORCE A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

ABRAHAM E. FREEDMAN,
CHARLES SOVEL,
36 Seventh Avenue,
New York, New York 10011.

MANDELL AND WRIGHT,
South Coast Building,
Houston, Texas 77002.

A. FRED FREEDMAN,
410 Woodward Building,
Washington, D. C.

Attorneys for Petitioner.

Pandick Press, Inc., 22 Thames St., New York, N. Y. 10006. U. S. A.

Statement of Questions Presented.

1. Where a union, by informational picketing, is appealing to the membership of another union to stop illegal picketing, and is not engaged in a labor dispute as defined in Section 2(9) of the Act, is not the National Labor Relations Board without jurisdiction to intervene?

2. Where a union, by informational picketing, is appealing to the membership of another union to stop illegal picketing, and is not engaged in a dispute with nor has made any demands or requests of any kind upon any employer, is not Section 8(b) (4) (i) (ii) (B) of the Act dealing with secondary boycotts inapplicable because of the absence of a dispute with a primary employer?

3. Where a union, by informational picketing, is appealing to the membership of another union to stop illegal picketing, and does not appeal or urge others not to cross the informational picket line, is not such informational picketing protected freedom of speech under the First Amendment of the United States Constitution?

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 18789

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

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Table of Cases.

Statutes.

* Cases or authorities chiefly relied on are marked by asterisks.

Other Authorities.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 18789.

NATIONAL MARITIME UNION OF AMERICA,
AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BRIEF FOR PETITIONER.

JURISDICTIONAL STATEMENT.

This case is before the Court on petition to review a Decision and Order of the National Labor Relations Board and on the Board's cross-application for enforcement. The jurisdiction of this Court arises under Sections 10(e) and (f) of the National Labor Relations Act, 29 U. S. C. §§160(e) and (f).

STATEMENT OF THE CASE.

This petition for review of a decision of the National Labor Relations Board arises out of efforts by petitioner, National Maritime Union of America, AFL-CIO (NMU), to protect itself from the illegal picketing of another union. The dispute grows out of efforts by the Marine Engineers' Beneficial Association (MEBA), a union representing

marine engineroom officer personnel, to put a shipping company, Cambridge Carriers, Inc., out of business because it had signed a collective bargaining agreement with the Brotherhood of Marine Officers (BMO), an affiliate of NMU.

On June 10, 1963, the SS. *Maximus*, then owned by Cambridge Carriers, Inc., docked at Pier 84 South in the Port of Philadelphia. The vessel had been commissioned to take food and drugs to Cuba in exchange for prisoners captured during the ill-fated invasion of that island. Cambridge was a newcomer to the shipping business, having only recently acquired the *Maximus*, and had collective bargaining agreements with NMU and BMO as representatives of its unlicensed and licensed personnel respectively.

Shortly after the *Maximus* docked, MEBA, which did not have a contract with Cambridge, established picket lines at Pier 84 and exhibited placards describing Cambridge as unfair to MEBA engineers.[1] At the same time, Luckenbach Stevedoring Company, whom Cambridge had engaged to load the vessel, failed to order the required longshoremen gangs, thus preventing the loading of the vessel's cargo. This picketing by MEBA continued through June 20, 1963, and, as a result the *Maximus* remained moored at Pier 84, her vital cargo unable to be loaded, and her crew, both unlicensed (NMU) and licensed (BMO), immobilized.

To advise the public in general, and the MEBA rank and file in particular, of the illegal conduct of the engineers' union, NMU established informational picket lines at the Poydras Street wharf and Cotton Warehouse wharf in New Orleans where MEBA engineers were employed (TXD-2)*.

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[1] The purpose of the MEBA picketing was to force Cambridge to abandon its contract with BMO and, instead, enter into a contract with MEBA.

* TXD references are to the trial examiner's decision. Other references are to pages in typed transcript of testimony.

Similar informational picketing also was conducted in the Ports of Philadelphia, Houston and Galveston.[2] The NMU pickets carried placards which read as follows:

INFORMATIONAL PICKETING
M. E. B. A. ENGINEERS
INTERFERE WITH
EMPLOYER WHO
LAWFULLY RECOGNIZE N. M. U.

The picketing commenced on June 17, 1963 and terminated on June 20, 1963, when the MEBA stopped picketing the *Maximus* in Philadelphia. During this period, first the SS. *Del Valle* and then the SS. *Del Mar,* both owned by Delta Steamship Lines, Inc.[3] were moored at the Poydras Street wharf (TXD-2). At the same time, the SS. *Neva West* of Bloomfield Steamship Company,[4] was docked at the Cotton Warehouse wharf (TXD-3). All three of these vessels employed MEBA engineers. The picketing was conducted in a peaceful manner and at no time, either before, during or after the picketing, did any representative of NMU make any request or demand of any kind upon Delta, Bloomfield or any other employer (Tr. 26, 36, 56).

Following the filing of unfair labor practice charges by Delta and Bloomfield, the National Labor Relations Board, through its regional office, issued a consolidated complaint alleging that NMU's picketing of the MEBA engineers constituted a secondary boycott in violation of Section

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[2] The picketing in Philadelphia became the subject of charges in Board Case Nos. 4-CC-262 and 4-CC-263. The picketing in Houston and Galveston became the subject of charges in Board Case Nos. 23-CC-125, 23-CC-126 and 23-CC-127. Petitions to review the Board's Decision and Order in these cases presently are pending before the Court of Appeals for the Second Circuit, Docket No. 29067 (Philadelphia cases) and Docket No. 29068 (Houston and Galveston cases).

[3] Delta Steamship Lines, Inc. is the charging party in Board Case No. 15-CC-189.

[4] Bloomfield Steamship Company is the charging party in Board Case No. 15-CC-190.

8(b)(4)(i)(ii)(B) of the Labor-Management Relations Act, as amended, 29 U. S. C. §158(b)(4)(i)(ii)(B). On January 23, 1964, following a formal hearing, trial examiner John F. Funke issued his decision recommending dismissal of the consolidated complaint (TXD-9). He found that the NMU picketing did not induce or encourage any individual to refuse to work, but, rather, was in protest against the picketing of the *Maximus* (TXD-4), and that such an objective was not proscribed by the Act. He further found that no employer was directly involved in the dispute (TXD-5), and that no demands had been made by NMU on any employer (TXD-3, TXD-5). Relying on these findings, and on *Douds* v. *International Longshoremen's Association*, 224 F. 2d 455 (2nd Cir. 1955), *cert. denied*, 350 U. S. 873 (1955), he concluded that Section 8(b)(4)(i)(ii)(B) was not applicable to the instant case because of the absence of a dispute with a primary employer.

The National Labor Relations Board, however, refused to adopt the trial examiner's recommendations and, instead, found a violation of the Act. In its decision, the Board refused to follow *Douds* v. *International Longshoremen's Association, supra*, and also refused to follow the recent decision of the Court of Appeals for the Fourth Circuit in *NLRB* v. *International Longshoremen's Association*, 332 F. 2d 992 (4th Cir. 1964), that the absence of a dispute with an employer deprived the Labor Board of jurisdiction to intervene. The Board also found the NMU picketing was for an illegal object in that it was intended as a "signal" for a general cessation of work at the piers.

Because of the Board's deliberate refusal to follow clear judicial precedent, and the abridgement of freedom of speech inherent in its decision, NMU has filed this petition for review.

STATUTES INVOLVED.

National Labor Relations Act, 29 U. S. C. §152(9).

> The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

National Labor Relations Act, 29 U. S. C. §158(b)(4).

> It shall be an unfair labor practice for a labor organization or its agents—
>
> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
>
> • • • • • •
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, . . .

STATEMENT OF POINTS.

1. Since the National Maritime Union informational picketing did not relate to a labor dispute as defined in Section 2(9) of the National Labor Relations Act, 29 U. S. C. §152(9), the National Labor Relations Board erred in refusing to dismiss the complaint for lack of jurisdiction.

2. Since the National Maritime Union informational picketing was directed solely to the membership of another union, and no demands of any kind were made on any employer, the National Labor Relations Board erred in holding that Section 8(b)(4)(i)(ii)(B) of the Labor-Management Relations Act, as amended, 29 U. S. C. §158(b)(4)(i)(ii)(B), dealing with secondary boycotts, was applicable even though there was no dispute with a primary employer.

3. Since the purpose of the National Maritime Union informational picketing was to appeal to the membership of another union to stop illegal picketing, and there was no appeal to the public or neutral employees not to cross the informational picket line, the Board erred in not finding that the NMU picketing was protected freedom of speech under the First Amendment to the United States Constitution.

SUMMARY OF ARGUMENT.

The purpose of the National Maritime Union informational picketing was to urge MEBA rank and file to prevail on their union officials to stop the illegal picketing of the *Maximus*. This NMU informational picketing did not relate to a "labor dispute" as defined in Section 2(9) of the National Labor Relations Act, 29 U. S. C. §152(9) in that it was not part of a controversy concerning terms or conditions of employment, and NMU was not seeking to gain recognition as the representative of any employees. Accordingly, since the NMU informational picketing did not fall within the statutory definition of a labor dispute, the National Labor Relations Board should have dismissed the consolidated complaint for lack of jurisdiction. *NLRB* v. *International Longshoremen's Association*, 332 F. 2d 992 (4th Cir. 1964).

National Maritime Union was not engaged in a dispute with any employer and did not make any demands of any kind whatsoever on any employer. The legislative history of the secondary boycott provision of the Labor-Management Relations Act, as amended, 29 U. S. C. §158(b)(4)(i)(ii)(B), discloses that this section was intended to apply *only* to cases involving a dispute with a primary employer. Since, in the instant case, there was no dispute with a primary employer, the NMU informational picketing was not conduct proscribed by Section 8(b)(4)(i)(ii)(B) of the Act. *Douds* v. *International Longshoremen's Association*, 224 F. 2d 455 (2nd Cir.), *cert. denied*, 350 U. S. 873 (1955).

The NMU picketing was purely informational in character and no effort was made to prevent anyone from crossing the picket line. Despite this, however, the Board found that the NMU picketing was intended as a "signal" for work stoppages. The effect of this holding is to make picketing illegal not because of the conduct of the pickets but because of the conduct of others. Since the speech element in picketing is constitutionally protected, *Thornhill* v. *Alabama*, 310 U. S. 88 (1940), the Board's holding con-

stitutes an unconstitutional abridgement of the right to freedom of speech and expression as guaranteed by the First Amendment of the United States Constitution. Moreover, the concept of "signal" picketing has been rejected by the United States Supreme Court, *NLRB* v. *Fruit and Vegetable Packers,* U. S. , 12 L. Ed. 2d 129 (1964).

ARGUMENT.

POINT ONE.

The Board exceeded its jurisdiction in holding that the Act applied even though no labor dispute was involved.

In the recent *Tulse Hill* case, *NLRB* v. *International Longshoremen's Association,* 332 F. 2d 992 (1964), the Court of Appeals for the Fourth Circuit flatly rejected an attempt by the National Labor Relations Board to extend its jurisdiction to controversies which did not constitute labor disputes as defined in Section 2(9) of the Act. There the International Longshoremen's Association had refused to refer longshoremen to Maryland Ship Ceiling Co., a stevedore, for work aboard the *Tulse Hill,* a vessel which had been engaged in trade with communist Cuba. In reversing the Board's assumption of jurisdiction the Court of Appeals stated (at page 995):

> "The more important attack on the Board's jurisdiction is that we have here no 'labor dispute' as the law defines it. Beyond doubt the National Labor Relations Act, as amended, is designed 'to regulate the conduct of people engaged in labor disputes.' Marine Cooks & Stewards *v.* Panama S. S. Co., 362 U. S. 365, 372, 45 LRRM 3118 (1960). The Act is replete with references to the term 'labor dispute' and Section 2(9) provides a definition of this phrase.
>
> > "(9) The term 'labor dispute' includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relations of employer and employee." 29 U. S. C. A. §152(9).
>
> "The Act has been interpreted as conferring Board jurisdiction over a variety of labor matters, *but there*

> *can be no jurisdiction where the complaint presents a controversy unrelated to the resolution of a 'labor dispute' as defined.* We think that this is the case here." (Emphasis supplied.)

Depite this clear judicial admonition to the Board to confine itself to its statutorily prescribed jurisdiction, the Board in the present case has again assumed jurisdiction and found a violation of the Act in a controversy which does not fall within the statutory definition of a labor dispute. In the instant cases, the evidence is clear beyond any doubt that NMU did not have a dispute with any employer, nor was it seeking to compel any action on the part of any employer. Moreover, NMU was not engaged in any controversy concerning terms or conditions of employment and was not seeking to gain recognition as the representative of any employees. The sole purpose of the NMU picketing was to bring a message to MEBA members about what their union was doing to the *Maximus* and the effect of this picketing on the NMU crew. This action by NMU does not fall within the Section 2(9) definition of a labor dispute. Accordingly, the Court's reasoning in *NLRB* v. *International Longshoremen's Association, supra,* is equally applicable here (332 F. 2d 996):

> "The point relied on by ILA is not merely the absence of a labor dispute with a primary employer, as the Board's opinion states. The point is rather the absence of any 'labor dispute' as the statute defines it, namely, a dispute concerning 'terms of conditions of employment'. . . . The existence of a 'labor dispute,' *the indispensable prerequisite to jurisdiction, is simply assumed by the Board. Implied in the Board's pronouncement is the notion that whenever a union calls a work stoppage or refuses to supply labor there is a 'labor dispute.'* We cannot accept this view." (Emphasis supplied.)

In the case involving similar NMU picketing in Philadelphia, 147 NLRB No. 144, the Board refused to follow the Fourth Circuit's views "until such time as the issue is finally resolved by the Supreme Court." In the case

growing out of the NMU picketing of MEBA engineers in the Houston Galveston area, 147 NLRB No. 142, the Board attempted to bridge this gap in its statutory jurisdiction by merely noting there was an "underlying labor dispute" involved, although here too the Board apparently recognized that this "underlying dispute" did not fit the Section 2(9) definition. In the instant case, the Board went so far as to claim that the Fourth Circuit denied enforcement of the order in the *Tulse Hill* case "on other grounds" than the jurisdictional issue, 147 NLRB No. 147, Note 11. How the Board could have reached this latter conclusion is incomprehensible in view of the clear language of the Court's opinion previously cited. In any event, the Board's inconsistent and conflicting interpretations of the *Tulse Hill* case serve only to emphasize the fatal jurisdictional defect in the instant decision. It is respectfully submitted that since the picketing in the instant case did not relate to a labor dispute as defined in the Act, the National Labor Relations Board lacked jurisdiction over the controversy. For this reason alone, the Board's Decision and Order should be set aside and the cross-application for enforcement denied.

POINT TWO.

Since there was no dispute with a primary employer, the NMU picketing was not a violation of Section 8(b)(4)(i)(ii)(B) of the Act.

Despite the absence of any dispute with a primary employer, the Board found that the NMU picketing was secondary activity in violation of Section 8(b)(4)(i)(ii)(B) of the Act.[5] This section has been referred to as "one of

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[5] Section 8(b)(4)(i)(ii)(B) makes it an unfair labor practice for a union:

> "(i) to engage in, or to induce or encourage any individual employed by a person engaged in commerce or in an industry effecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture,

the most labyrinthine provisions ever included in a federal statute.'"* Literally interpreted, it would bar *all* picketing, primary as well as secondary, and including constitutionally protected picketing. See *Local 761* v. *NLRB*, 366 U. S. 667, 672 (1961). However, the Supreme Court frequently has recognized that this was not the legislative intent, and, accordingly, has given Section 8(b)(4)(i)(ii)(B) a quite narrow construction. Thus, in the recent case of *NLRB* v. *Fruit and Vegetable Packers*, U. S. , 12 L. Ed. 2d 129, 133 (1964), the Court stated:

> "Congress has consistently refused to prohibit peaceful picketing except where it is used as a means to achieve specific ends which experience has shown are undesirable. 'In the sensitive area of peaceful picketing Congress has dealt explicitly with isolated evils which experience has established flow from such picketing.' Labor Board *v.* Drivers Local Union, 362 US 274, 284, 4 L ed 2d 710, 718, 80 S. Ct. 706. *We have recognized this congressional practice and have not ascribed to Congress a purpose to outlaw peaceful picketing unless 'there is the clearest indication in the legislative history,' ibid.*, that Congress intended to do so as regards the particular ends of the picketing under review. Both the congressional policy and our adherence to this principle of interpretation reflect concern that a broad ban against peaceful picketing might collide with the guarantees of the First Amendment." (Emphasis supplied.)

Reference to the legislative history of the secondary boycott provisions reveals that Congressional attention

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process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

"...

"(B) forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, ..."

* Aaron, "The Labor-Management Reporting and Disclosure Act of 1959" (Pt. 2), 73 Harv. L. Rev. 1086, 1113 (1960).

was focused only on disputes involving unions and employers, and on efforts by a union to enlist the support of neutral employees to further its cause in a dispute with a *primary employer*. Nowhere in the legislative history is there even the slightest suggestion that Section 8(b)(4)(i)(ii)(B) was to apply in situations where no primary employer was involved. Thus, Senator Goldwater, one of the leading proponents of a broad prohibition of secondary activity, in the course of the discussions in the Senate on the proposed amendments to Section 8(b)(4), introduced a glossary of terms to be used in the debate. The following definition of "secondary employer" was adopted without objection:

> "Secondary employer." He is the employer who does business with the *primary employer* that is engaged in a *labor dispute.*" 2 Leg. Hist. 1389 (Emphasis supplied).

Similarly, Senator McClellan in discussing the proposed legislation stated:

> "This bill would amend Section 8(b)(4) of the Taft-Hartley Act to prohibit certain types of coercion of the employer, and particularly, to prevent coercion by picketing at the premises of the secondary employer in order to prevent customers from doing business with the employer *primarily involved in a labor dispute.*" 2 Leg. Hist. 1007. (Emphasis supplied.)

Many other Congressmen spoke on this legislation and described the type of conduct to which it applied. In every instance, the illustration referred to a dispute involving a primary employer.[7]

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[7] See 2 Leg. Hist. 994 (Statement of Secretary of Labor Mitchell introduced into Cong. Record); 2 Leg. Hist. 1079, 1303 (Statement of Senator Goldwater); 2 Leg. Hist. 1193, 1194, 1196 (statement of Senator McClellan); 2 Leg. Hist. 1470 (Statement of Rep. LaFore); 2 Leg. Hist. 1519 (Statement of Rep. Landrum); 2 Leg. Hist. 1523 (Statement of Rep. Griffin); 2 Leg. Hist. 1526 (Statement of Rep. Hoffman); 2 Leg. Hist. 1580 (Statement of Rep. Rhodes).

Considering the extensive legislative history available, one would certainly expect to find at least some reference to the possible application of Section 8(b)(4)(i)(ii)(B) of the Act to disputes not involving a primary employer, if, in fact, Congress intended that it be so applied. The complete absence of such legislative history is a clear and positive indication that Congress did not contemplate that Section 8(b)(4)(i)(ii)(B) would be so interpreted. In light of this legislative background, due regard for the Supreme Court's admonition in *NLRB* v. *Fruit and Vegetable Packers, supra,* that peaceful picketing is not to be outlawed unless "there is the clearest indication in the legislative history," requires that the Board's finding of a secondary boycott in the instant case be set aside.

There is nothing new in the contention that a dispute with a primary employer is a *sine qua non* to a secondary boycott. The question arose in *Douds* v. *International Longshoremen's Association,* 224 F. 2d 455 (2nd Cir.), *cert. denied,* 350 U. S. 873 (1955), which involved an inter-union dispute on the New York waterfront. There one union, in retaliation for picketing by its rival, refused to handle goods that were delivered by a third union because the third union had respected the rival's picket line. In finding that this conduct was not a violation of the Act, Judge Learned Hand stated (225 F. 2d at 458-59):

> "We shall for the moment assume that whatever was a violation of §8(b)(4)(A), 29 U. S. C. A. §158(b)(4)(A), was disobedience of the order and address ourselves to whether the refusal was such a violation. It was not, we think, within the three most recent decisions of the Supreme Court construing the section. (Footnote omitted). In the first place it was not a 'secondary boycott' in the usual meaning of that term; *for that presupposes a labor dispute between the employees of one employer, with whom another employer has business relations, as a customer, or as the source of his material, or the like.* It further presupposes that the employees of the second employer, wishing to make common cause with those of the first, strike, or threaten to strike, against their own employer, unless he will discon-

> tinue his relations with the first, by this means putting pressure on the first to come to terms with his own employees. . . . In the case at bar it is true that the '807' drivers were in a different craft from the longshoremen; but the 'object' of the 'Independent's' refusal to serve their trucks was not to advance the union solidarity, *but a move against '807' for taking part in the dispute between itself and 'AFL-ILA.' If this was within the statute it means that a union may not advance its own cause in a dispute with another to gain representation, if the step it takes causes a cessation of business between its employer and a third person, or between* two third persons. It is one thing to say that such interference is unlawful when its 'object' is the promotion of unionism in general, and a very different thing to forbid such a sanction as part of the contest for control. We start therefore with the premise that, if the section goes so far, it ought to appear very plainly in the text, and *we do not think that it does.*" (Emphasis supplied.)

In the various cases growing out of the NMU picketing of MEBA engineers, the Board sought to dismiss *Douds* v. *International Longshoremen's Association, supra,* as "outside the mainstream of the law on this point," 147 NLRB No. 142, Trial Examiner's Decision, and not "controlling herein," 147 NLRB No. 147, Note 12. Instead, it chose to rely on its own decision in the *Tulse Hill* case, 146 NLRB No. 100, wherein enforcement was denied by the Fourth Circuit, *NLRB* v. *International Longshoremen's Association, supra,* discussed previously in this brief. Thus, there is no judicial authority to support the Board's position; rather, the Board is placing itself above the courts and is refusing to follow explicit judicial authority.

It is submitted that the absence of a dispute with a primary employer takes these cases outside of Section 8(b)(4)(i)(ii)(B) of the Act, and on this account alone, the Board's finding of a violation should be set aside and the cross-application for enforcement denied.

POINT THREE.

The NMU informational picketing was constitutionally protected freedom of speech under the First Amendment to the United States Constitution.

A fundamental error in the Board's reasoning in the instant case is its resorting to the concept of "signal picketing" as a substitute for direct evidence that NMU was picketing for an illegal object. In order to establish a violation of Section 8(b)(4)(i)(ii)(B) of the Act, it is necessary to show that the picketing is for an object proscribed by the statute. See *NLRB* v. *Local 825, International Union of Operating Engineers*, 326 F. 2d 218 (3rd Cir. 1964). However, the object of the NMU picketing—urging MEBA rank and file to prevail upon their union leadership to stop the picketing of the *Maximus*—was not prohibited conduct. See National Maritime Union and Weyerhaeuser *et al.*, 147 NLRB No. 142 (Trial Examiner's Decision). Therefore, in order to bring the case within the statutory prohibition, and notwithstanding the legality of the objective of NMU's picketing, the Board found that an intermediate objection of the picketing was to cause a general cessation of work on the piers. In addition to being erroneous as a matter of law, the difficulty with this theory is that it is not supported by the record. On the contrary, the evidence is clear that the picket signs were purely informational in character, and that the pickets made no effort to stop anyone from working or crossing the picket lines. Faced with this complete absence of any direct evidence of an illegal objective, the Board proceeded to *assume* this crucial fact by finding that in the maritime industry a picket line is a "signal" for work stoppages. This assumption is an unconstitutional abridgement of the union's right of freedom of speech for its effect is to ban, as a "signal", all picketing by NMU, regardless of the circumstances and regardless of the message of the picket-

ing. In effect, the Board is saying that maritime unions may not picket because such picketing is a "signal" for work stoppages, while, at the same time, unions in industries where picketing does not have this "signal" effect are free to engage in the identical kind of picketing. We submit that such a limitation on the freedom of expression has never been adopted by Congress, *NLRB* v. *Fruit and Vegetable Packers, supra,* and, indeed, it collides head on with the guarantee of freedom of speech in the First Amendment to the United States Constitution.

As Mr. Justice Black noted in his concurring opinion in *NLRB* v. *Fruit and Vegetable Packers, supra,* picketing involves two concepts: (1) patrolling and (2) speech. While the patrolling aspect may be regulated, see *Giboney* v. *Empire Storage & Ice Co.,* 336 U. S. 490 (1949), the speech element is constitutionally protected. *Thornhill* v. *Alabama,* 310 U. S. 88 (1940). The fatal weakness in the Board's concept of signal picketing is that it makes the legality of the picketing turn not upon the nature of the patrolling, but rather on the extent to which others agree with the pickets, and as such it is an unconstitutional regulation of freedom of speech. *Thornhill* v. *Alabama, supra.*

The Supreme Court recently rejected this concept of "signal" picketing in cases arising under Section 8(b)(4) of the Act. In *NLRB* v. *Fruit and Vegetable Packers, supra,* the Court stated:

> "This distinction is opposed as 'unrealistic' because, it is urged, *all picketing automatically provokes the public to stay away from the picketed establishment.* The public will, it is said, neither read the signs and handbills, nor note the explicit injunction that 'That is not a strike against any store or market.' *Be that as it may, our holding today simply takes note of the fact that a broad condemnation of peaceful picketing, such as that urged upon us by petitioners, has never been adopted by Congress,* and an intention to do so is not revealed with that 'clearest indication in the legislative history,' which we require. Labor Board *v.* Drivers Local Union, *supra.*" (Emphasis supplied.)

The National Maritime Union, like other groups in our society, has the constitutional right to bring its message to the attention of the public. Certainly in an area as controversial as the field of labor relations, it is absolutely essential to our free society that access to the "market place of ideas" not be restricted. The concept of signal picketing as applied by the Board in this case is such a restriction and, accordingly, should be rejected.

In an effort to find some support for its finding that the NMU picketing was intended to cause work stoppages, the Board cited the testimony of Edward Theodore, Jr. that an *unidentified* picket told him that the picketing was "to keep the longshoremen from going on" the ships and that another *unidentified* picket told witness Tillis Gauthier that "only people with personal belongings was allowed to go on" the ships. This testimony had been rejected by the trial examiner as hearsay, see *Los Angeles Building and Construction Trades Council, et al.*, 94 NLRB 415 (1951), but the Board ignored the hearsay rule and held it to be admissible on the ground that it was "intimately related to the activities sponsored by the union," and "consistent with expressions by NMU Port Agent George and the overall conduct of Respondent" (147 NLRB No. 147, Footnote 6). These reasons, however, do not satisfy the requirements for any of the exceptions to the hearsay rule. The underlying basis for the rule excluding hearsay testimony is the inability of the adverse party to cross examine the absent witness. 5 Wigmore, Evidence §1362 (1940 Ed.). The exceptions to the hearsay rule are premises either on the possible availability of the person who allegedly made the statement to rebut the testimony, 5 Wigmore, Evidence §1371 (1940 Ed.), or on the existence of other circumstances which serve to guarantee the truthfulness of the utterance and which are, therefore, considered to be an adequate substitute for the right to cross examine. 5 Wigmore, Evidence §1421 (1940 Ed.). The alleged statements by *unidentified* pickets do not fit in either of these categories, for being *unidentified,* NMU was deprived of the oppor-

tunity to seek out these witnesses and have them testify as to what they said. The Board's ruling that the hearsay testimony of *unidentified* witnesses is admissible is an open invitation to fabrication against which a charged party is completely defenseless.

Not only do the reasons cited by the Board for admitting the hearsay testimony not fit within any of the exceptions to the hearsay rule, but nowhere in the record is there the slightest evidence that NMU Port Agent George told anyone that the purpose of the picketing was to stop workmen from going on the ships.[8] The Board's finding in this regard is another example of its assuming the existence of the ultimate fact in issue.

The Board's acceptance and reliance upon hearsay testimony operated to deprive petitioner of the right of cross examination on the most important factual issue in the case. The admission of this incompetent testimony constituted highly prejudicial error necessitating reversal of the Board's Decision.

Conclusion.

Since the NMU picketing did not relate to a labor dispute as defined in the Act, the Board lacked jurisdiction over this controversy. Moreover, Section 8(b)(4)(i)(ii)(B) was not applicable to the NMU picketing because of the absence of a dispute with any primary employer. Finally, the evidence does not establish that the NMU picketing was for an illegal objective, and the Board's resorting to

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[8] The Board apparently was referring to the testimony of Bloomfield Vice-President, Gerard E. Weickoff that Port Agent George told him "We just want you to make a lot of noise," and "Well I want you to call Paul Hall and tell him to call off the MEBA pickets on the *Maximus*." However, there is nothing in this testimony which suggests a threat of a work stoppage or in anyway characterizes the picketing. Rather, the remarks attributed to Mr. George are consistent with NMU's announced objective of calling attention to the high-handed conduct of the MEBA. Such informational activity is not prohibited by the Act and does not establish that the picketing was for an illegal objective.

the concept of signal picketing as a substitute for such evidence is in violation of the right of freedom of speech guaranteed by the First Amendment to the Constitution.

For all the foregoing reasons, it is respectfully submitted that the Board's Decision and Order should be set aside and the cross-application for enforcement denied.

Respectfully submitted,

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18789

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and Cross-Petition for Enforcement of an Order of the National Labor Relations Board

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

The questions presented are not those which appear on the first page of petitioner's brief, but are those to which the parties agreed in a prehearing conference stipulation pursuant to Rule 38(k) of this Court. They are as follows:

1. Was the Board warranted in finding that there was a labor dispute in this case?

2. (a) Is the National Labor Relations Act applicable in the absence of a labor dispute?

(b) Can an unfair labor practice exist in the absence of a labor dispute?

3. Do the Board's findings disclose a violation of Section 8(b)(4)(i)(ii)(B) of the Act?

4. Is there substantial evidence on the whole record to support the Board's holding that petitioner violated Section 8(b)(4)(i)(ii)(B) of the Act?

5. Does the Board's holding that petitioner violated Section 8(b)(4)(i)(ii)(B) of the Act infringe petitioner's right of free speech as guaranteed by the First Amendment to the United States Constitution?

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

COUNTERSTATEMENT OF THE CASE

This case is before the Court upon the petition of the National Maritime Union of America, AFL-CIO (hereafter "NMU," or "petitioner") to review and set aside an order of the National Labor Relations Board issued against NMU on June 30, 1964, pursuant to Section 10(c) of the National Labor Rela-

tions Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*).[1] In its answer the Board has requested enforcement of its order. The Board's decision and order are reported at 147 NLRB No. 147.[2] This Court has jurisdiction of the proceedings under Section 10(e) and (f) of the Act.

I. The Board's findings of fact

The Board found that NMU, in the course of an inter-union controversy over representation, picketed the Poydras Street wharf, used by Delta Steamship Lines, Inc., and the Cotton Warehouse wharf, used by Bloomfield Steamship Company, in the Port of New Orleans, with an object of disrupting all stevedoring, cargo and maintenance operations at the picketed wharves by forcing the various stevedoring, steamship and maintenance companies to cease doing business with each other and with other persons, in violation of Section 8(b)(4)(i)(ii)(B) of the Act. The

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[1] Certain relevant portions of the statute are printed at p. 5 of petitioner's brief. A portion of the Norris-LaGuardia Act, 29 U.S.C. 101, 113 is reprinted, *infra*, p. 38.

[2] The Board has simultaneously considered and decided two other cases involving similar conduct by the Union in Houston and Galveston, Texas (*Houston Maritime Association, Inc., etc.*, 147 NLRB No. 142) and in Philadelphia, Pennsylvania (*Weyerhauser Lines, etc.*, 147 NLRB No. 144). Those decisions, involving issues identical to those in the instant case are reprinted, together with the instant decision and order, in the Joint Appendix. The Union has filed petitions to review those decisions in the Court of Appeals for the Second Circuit, and the Board has cross-petitioned for enforcement.

facts upon which the Board based its findings are summarized below.

A. *Background*

The instant case arises out of a dispute concerning representation of employees on the S.S. *Maximus*—a dispute between the Seafarers International Union (SIU) and its affiliate Marine Engineers Beneficial Association (MEBA) on the one hand, and the National Maritime Union (NMU), petitioner here, and its affiliate the Brotherhood of Marine Officers (BMO) on the other.[3] In June 1963, the *Maximus*, recently sold by the Grace Line to Cambridge Carriers, had been commissioned to take food and drugs to Cuba in exchange for prisoners captured during the "Bay of Pigs" invasion. Under the ownership of Grace, the *Maximus* had been manned by members of MEBA. After its sale to Cambridge Carriers, the MEBA engineers were replaced by members of the BMO. On June 10, 1963, MEBA began to picket the *Maximus* in Philadelphia. The pickets carried signs which characterized Cambridge Carriers as unfair to MEBA engineers. As a result the *Maximus* was idled in Philadelphia until June 21, the day after the picketing ceased. The picketing of ships manned by MEBA in New Orleans, which gave rise to the instant case, was, concededly, NMU's response to MEBA's Philadelphia picketing. Similar "response" picketing of MEBA-manned ships in the ports of

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[3] In its brief to the Trial Examiner, the Union characterized the dispute as " . . . a contest for control between the NMU and MEBA and SIU".

Houston, Galveston and Philadelphia led to the unfair labor practice proceedings mentioned in note 2, page 2, *supra*.

B. *The unfair labor practices*

Delta Steamship Lines, Inc., is a Louisiana corporation engaged in the business of transporting cargo between points in the United States and points in South America and Africa. Its revenue from this service is in excess of one million dollars annually (TXD 1-2; Tr. 7).[4] Delta carries on its operations in New Orleans at the Poydras Street wharf. It uses its own employees to load and unload its vessels, hiring them from Locals 1418 and 1419 of the International Longshoremen's Association, with whom Delta has a collective bargaining agreement (Tr. 12-13).

Bloomfield Steamship Company is a Delaware corporation engaged in transporting cargo between points in the United States and points in foreign countries. Its gross annual revenue is in excess of $100,000 (TXD 2; Tr. 46-47). Bloomfield's port agent, States Marine Corporation, is authorized to handle its freight traffic, which includes, *inter alia*, the loading and unloading of cargo. These operations are conducted at the Cotton Warehouse wharf in New Orleans (D&O 1; Tr. 47).

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[4] "Tr." references are to the original transcript. "D&O" refers to the Board's Decision and Order. "TXD" refers to the Trial Examiner's Decision. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

Neither Bloomfield nor Delta has a bargaining relationship with NMU or BMO. Both companies have collective bargaining contracts with MEBA and SIU (D&O 2; Tr. 17, 25-27, 55-56). Petitioner concedes that it has no dispute with either Delta or Bloomfield (D&O 2; Tr. 27-28, 36, 57-59).

On June 17, 1963, NMU began picketing the wharves used by Delta and Bloomfield (D&O 2; Tr. 16, 62). The pickets carried signs stating: "Information picketing. MEBA Engineers interfere with employers lawfully recognizing NMU" (Tr. 17). At this time Delta's ship, S.S. *Del Valle*, and Bloomfield's ship, *Neva West*, were in port.

In order to discharge the *Del Valle*, Delta, on June 17, ordered seven gangs of longshoremen to start work at 1 P.M. The longshoremen reported, but did not cross the picket line at the foot of the gangway (D&O 2; Tr. 13-15, 17). The gangs were reordered at a 5 P.M. shape-up for a 6 P.M. start. The men again reported but did not cross the picket line (D&O 2; Tr. 19-20). Picketing continued on June 18. Delta once again ordered several gangs for an 8 A.M. start. Three gangs appeared, but would not work. At 1 P.M. the *Del Valle* was moved from the wharf to a general anchorage point (Tr. 20-21) and picketing ceased. Later that day, at about 3:40 P.M., Delta's S.S. *Del Mar* arrived at the Poydras Street wharf. There were no pickets and the gangs ordered by Delta discharged mail, passengers and baggage (Tr. 22). This work was not completed on June 18 and the *Del Mar* remained at the wharf. On June 19, NMU resumed picketing. The six gangs ordered by Delta to

complete the work on the *Del Mar* arrived at the wharf at 8 A.M. but did not cross the picket line. Longshore gangs were again ordered for that evening, but no work was done (D&O 2; Tr. 22-23). Meanwhile, the *Del Valle* had been brought back to the wharf at 7:45 A.M. on June 19. Longshoremen were ordered for 8 A.M. and evening work, but did no work on the vessel (Tr. 30-31). This situation continued on June 20 until about 2 P.M. when the picketing ceased.[5]

When the *Del Valle* docked on June 17, Delta's assistant Port Engineer determined that certain repairs were necessary. He awarded the work to Buck Kriehs and Company and to Best Electric Company. The general manager for Buck Kriehs informed Delta that he could not supply the men as long as there was a picket line. The shop superintendent for Best came to the ship to pick up a part that needed repair but would not cross the picket line and did not receive the part. (Tr. 38-40).

Delta employs its own carpenters and painters. There was work for them on the *Del Valle*, but after speaking to their union business agents, the carpenter and painter foremen reported to Delta that they would not cross the picket line (Tr. 40-41).

Picketing of the *Neva West* followed a similar pattern. The pickets first appeared at about 7:45 A.M. on June 17 at an intersection of two streets, one of which led directly into the Cotton Warehouse wharf

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[5] The dispute involving the picketing of the *Maximus* at Philadelphia was settled on the 20th.

(Tr. 62, 64). Later that day, they moved to the vicinity of the *Neva West* (Tr. 64). This picketing continued until June 20.

At the inception of the picketing on June 17, fork lift operators employed by States Marine attempted to report for work at their usual 8 A.M. time. The pickets, however, were at the intersection of two streets leading to the docks. The fork lift operators, members of ILA Local 854, did not proceed to the Cotton Warehouse wharf, but phoned the ILA delegate, Edward Theodore (Tr. 85). Mr. Theodore arrived at 9:40 A.M., discussed the situation with the pickets and told them "you're picketing the wrong place" (Tr. 85-87). One of the pickets then made a telephone call, at the conclusion of which he told Theodore, "We are not picketing the docks. We are picketing the ship to keep the longshoremen from going on" (D&O 3; Tr. 87). Shortly thereafter, the pickets moved to the vicinity of the *Neva West* and the fork lift operators reported for work on the docks (D&O 3; Tr. 67-69, 88).

States Marine Agency is Bloomfield's port agent. In order to perform its function of loading the *Neva West*,[6] its wharf superintendent, Harry B. Estes, ordered gangs of longshoremen and carpenters twice a day on June 17, 18, 19 and 20. These orders were placed with T. Smith and Company, a stevedoring company (D&O 2; Tr. 60, 61, 65-67, 69-73, 75). Longshoremen and carpenters reported each day but

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[6] Most of the work on this vessel was completed before the picketing began. Approximately 6 hours of work remained to complete the job (D&O 4; Tr. 48-49).

would not cross the picket line and no work was done until the afternoon of June 20, after the pickets had been removed (*ibid.*).

Dixie Machine Metal and Welding Works, Inc., is a Louisiana corporation engaged in the marine repair business (D&O 2; Tr. 78). On about June 15, Dixie Machine received an order to repair a line on the *Neva West*. Pursuant to this order its pipefitter foreman, Tillis Gauthier, went to the ship. He introduced himself to the picket and asked if he could go aboard to make the repair. The picket's reply was "no. Only people with personal belongings was allowed to go" (D&O 3; Tr. 79-81, 82). Gauthier did not go aboard (Tr. 81). A few days later when the picketing ceased, Gauthier boarded the ship and made the repair (Tr. 81).

Faced with the refusal of longshoremen and others to cross the picket line, Gerard Weickhoff, Bloomfield's vice president in charge of New Orleans operations, phoned NMU Port Agent George on June 18. He informed George that the *Neva West* needed only a few hours work, that the delay occasioned by the picketing was subjecting the Company to losses in a situation it was without power to resolve, and asked George to call off the pickets. George refused to order a halt to the picketing, although he stated he had full authority to do so. (D&O 4; Tr. 50-51). Weickhoff called George again on June 19: "I pleaded with him and asked him how much longer we had to go on with this thing. There was nothing that we could do. It was a dispute that they had with some other

union and we were not involved and we had nothing to do with it . . . ." George replied, "We realize your position, however, there is nothing we can do about it . . . We want you to be good and mad and make a lot of noise . . . I want you to call Paul Hall [7] and tell him to call off the MEBA pickets on the *Maximus*." Weickhoff again protested that "that was a matter that was out of my hands," and reminded George that the *Neva West* was ready to sail. (D&O 4; Tr. 50-55).

II. The Board's conclusions and order

Upon the foregoing facts the Board found that the Union violated Section 8(b)(4)(i) and (ii)(B) by inducing and encouraging individuals employed by Delta, Bloomfield, States Marine Agency, T. Smith and Company, Best Electric Company, and Dixie Machine to refuse in the course of their employment to perform services aboard the S.S. *Del Valle*, the S.S. *Del Mar* and the S.S. *Neva West*, and by coercing and restraining said employers and Buck Kriehs and Company, with an object of forcing or requiring said employers to cease doing business between themselves and with other persons (D&O 4-5).

The Board's order requires petitioner to cease and desist from the unfair labor practices found, and to post appropriate notices (D&O 7-8).

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[7] International President of the SIU.

SUMMARY OF ARGUMENT

I. A violation of Section 8(b)(4)(i)(ii)(B) requires that a labor organization or its agents (1) induce or encourage employees to strike or refrain from working, (2) "threaten, coerce, or restrain" any person, where an object of such conduct is forcing or requiring one person to cease doing business with another. This section embodies the Congressional purpose of "shielding unoffending employers and others from pressures in controversies not their own." *N.L.R.B.* v. *Denver Building and Construction Trades Council*, 341 U.S. 675.

Petitioner's dispute was with MEBA and SIU concerning representation of employees on the *Maximus*. It had no dispute with any of the companies at the wharves it picketed. Thus, these employers were the "neutral" or "secondary" employers for whose protection Section 8(b)(4) was enacted.

In the instant case, there is substantial evidence—set out at pp. 4-9, *supra*—to support the Board's finding that the purpose of petitioner's picketing at the Delta and Bloomfield wharves was to induce and encourage employees of Delta, Bloomfield, and other neutral employers, to refuse to work aboard the Delta and Bloomfield ships, with an object of forcing a cessation of business among Delta, Bloomfield, and other neutral employers. That the ultimate objective of the picketing—to force MEBA to cease picketing the *Maximus*—was not illegal is irrelevant for "a finding of an illegal intermediate object is all that is required." *Amalgamated Meat Cutters & Butcher*

Workmen v. *N.L.R.B.*, 99 App. D.C. 24, 237 F. 2d 20, cert. denied, 352 U.S. 1015.

II. Petitioner's major defenses are: (1) Its picketing arose out of a dispute with another union, which does not constitute a "labor dispute" within the definition of Section 2(9), and the Board lacked jurisdiction to hear the case; (2) its ultimate dispute was with another union, not with a "primary employer," thus there can be no "secondary boycott" within Section 8(b)(4); (3) the finding of a violation in this case infringed its right of "free speech." These defenses are without merit.

1. Petitioner's picketing was part of its effort to protect the job tenure of its members from encroachment by MEBA, to preserve its right to represent the employees on the *Maximus*, and to preserve its right to administer the collective bargaining agreement it had with Cambridge Carriers. This type of conflict between unions, over matters of representation or jurisdiction, is "expressly included within the definition of 'labor dispute.'" *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 93, 99-100. Accordingly, the contention that the Board lacks jurisdiction to hear the case is without merit.

2. Petitioner's contention that there must be a dispute with a "primary" employer in order for there to be a "secondary boycott" within Section 8(b)(4) is not supported by the language of 8(b)(4), its legislative history, or the Congressional purpose in enacting that section. Section 8(b)(4) forbids a union to engage in specified conduct where an object thereof is "forcing or requiring any person to . . . cease

doing business with *any other person* . . ." (emphasis added). Thus, the precise statutory language is not limited in the manner suggested by petitioner. The legislative history of the Labor Management Relations Act of 1947 shows that one of the prime evils which Congress sought to eliminate by the enactment of Section 8(b)(4) was the interference with a "neutral" employer's business relations resulting from interunion representation or jurisdictional disputes. Moreover, the Congressional purpose in enacting Section 8(b)(4) would, in large part, be frustrated if that section were declared inapplicable to disputes in which unions were waging a contest for jurisdiction and representation rights, for, regardless of the nature of the ultimate conflict, the pressure on neutrals resulting from a union's secondary conduct is precisely the same.

3. The Board's finding that the purpose of petitioner's picketing was to induce work stoppages among employees of secondary employers, once accepted, forecloses petitioner's argument that by finding such picketing illegal the Board infringed petitioner's right of free speech as guaranteed by the First Amendment. *IBEW* v. *N.L.R.B.*, 341 U.S. 694, 705. Nor did the Board act improperly in considering, as one element in determining the purpose of petitioner's picketing "that in the maritime-longshore industry, a picket line is known for its 'signal' effect" (D&O 3, TXD 7). By taking this factor into account, along with other record evidence as to the purpose of the picketing, the Board did not infringe petitioner's right of free

speech, but simply utilized the practical knowledge of labor relations which it was intended to, and has, developed in administering the National Labor Relations Act.

ARGUMENT

I. The Board Properly Found That Petitioner's Picketing of the Delta and Bloomfield Wharves Violated Section 8(b)(4)(i)(ii)(B) of the Act

A. *The controlling principles*

Section 8(b)(4) of the Act, as amended by the Labor-Management Reporting and Disclosure Act of 1959, provides that it shall be an unfair labor practice for a labor organization or its agents:

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, material, or commodities or to perform any services; or
>
> (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
>
> * * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person.

Thus, a Section 8(b)(4)(i)(B) violation requires two elements: (1) the labor organization or its agents must induce or encourage employees to strike or refrain from working; and (2) an object of this conduct must be the forcing or requiring of one person to cease doing business with another. Two prerequisites are also embodied in designation (ii), a new provision, added by Congress as a part of the 1959 amendments: (1) a labor organization or its agents must "threaten, coerce, or restrain" any person; and (2) an object of this conduct must, as under (i), be the forcing or requiring of one person to cease doing business with another. The legislative history of (ii) shows that by use of the phrase "threaten, coerce, or restrain," Congress intended both to foreclose threats made to neutral employers of "labor trouble or other consequences" [8] and to prohibit the carrying out of such threats by means of a "strike or other economic retaliation." [9]

The policy underlying these, the secondary boycott provisions of the Act, is to limit the scope of union-management conflicts, to confine their efforts to the disputing, "primary" parties and prevent their extension to those not directly involved, i.e. "secondary" parties. See *N.L.R.B.* v. *Denver Building and Construction Trades Council*, 341 U.S. 675, 692; Local

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[8] II Leg. Hist. 1568 (105 Cong. Rec. 15532); and see II Leg. Hist. 1750 (105 Cong. Rec. 8874). ("Leg. Hist." denotes the two-volume work *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* (G.P.O., 1959)).

[9] II Leg. Hist. 1523, 1581 (105 Cong. Rec. 14347, 15544-15545).

1976, *Carpenters* v. *N.L.R.B. (Sand Door)*, 357 U.S. 93, 100; *Local 761, etc.* v. *N.L.R.B.*, 366 U.S. 667, 672. Thus, the law is clear, the conduct described in Section 8(b)(4) is unlawful only to the extent it is directed at an employer other than the one with whom the union has its ultimate, or basic dispute, i.e., the one "with whom the union is principally at odds." *Local 1976, Carpenters* v. *N.L.R.B. (Sand Door)*, 357 U.S. 93, 99. See also, *United Steelworkers of America* v. *N.L.R.B.*, 111 App. D.C. 60, 294 F. 2d 256; *N.L.R.B.* v. *Enterprise Association*, 285 F. 2d 642 (C.A. 2); *Local 636, Plumbers* v. *N.L.R.B.*, 108 App. D.C. 24, 30-31, 278 2d 858, 863-865; *N.L.R.B.* v. *Local 294, Teamsters*, 273 F. 2d 696 (C.A. 2); *Rabouin* v. *N.L.R.B.*, 195 F. 2d 906, 912 (C.A. 2); cf. *N.L.R.B.* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 685-692.

B. *Petitioner's conduct*

Initially, it is clear from the Counterstatement, pages 3-9, *supra*, that petitioner's ultimate dispute in the instant case was with MEBA and SIU, concerning representation of employees on the *Maximus*. Petitioner concedes, even insists, that it had no dispute with Delta, Bloomfield or any other employer engaged in business at the picketed wharves. Thus, those employers are the "neutral" employers for whose protection Section 8(b)(4) was enacted, and, to the extent petitioner engaged in the conduct described in Section 8(b)(4), i.e., induced or encouraged individuals employed by those employers to refuse to perform services with an object of forcing a

cessation of business between their employers and other employers, the Board properly found its conduct unlawful.

That petitioner, by its picketing of the Delta and Bloomfield wharves, did seek to induce and encourage employees of Delta, Bloomfield and other employers to refuse to perform work aboard the *Del Mar*, *Del Valle*, and *Neva West*, seems plain. While the legend on the signs carried by petitioner's pickets stated that the picketing was "informational," the Board, in determining petitioner's objectives, is not limited by such language, but may properly look to all the surrounding circumstances. *N.L.R.B.* v. *Local 182, Teamsters*, 314 F. 2d 53, 58 (C.A. 2). Among these in the instant case is the fact, noted by both the Board and its Examiner (D&O 3, TXD 7), that waterfront unions are highly disciplined, so that a picket line will generally lead to work stoppages without regard to the legend on the picket signs.[10] If petitioner, as it claims, did not intend its picketing to have this effect, but sought solely to inform MEBA personnel aboard Delta and Bloomfield ships of MEBA's picketing of the *Maximus*, it could have taken steps to inform other employees that the picketing was not directed at them or their employers and

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[10] It has frequently been observed that "the reluctance of workers to cross a picket line is notorious." *N.L.R.B.* v. *Associated Musicians, Local 802, AFL*, 226 F. 2d 900, 904 (C.A. 2), cert. den., 351 U.S. 962; *Printing Specialties and Paper Converters Union, Local 388, AFL* v. *LeBaron*, 171 F. 2d 331, 334 (C.A. 9); *Piezonki* v. *N.L.R.B.*, 219 F. 2d 879 (C.A. 4); *Superior Derrick Corp.* v. *N.L.R.B.*, 273 F. 2d 891, 896 (C.A. 5), cert. den., 364 U.S. 816.

that they were free to cross the picket line. Cf. *Barker Bros. Corp.* v. *N.L.R.B.*, 328 F. 2d 431, 432 (C.A. 9). No such steps were taken by petitioner, even after its picket line had led to repeated refusals by employees of various employers to work aboard the *Del Valle, Del Mar,* and *Neva West.* In these circumstances, petitioner's claim that it did not intend by its picketing to induce secondary employees to cease work must be rejected. *Truck Drivers & Helpers, Local 728, etc.* v. *N.L.R.B. (Campbell Coal)*, 101 App. D.C. 420, 249 F. 2d 512, cert. den., 355 U.S. 958; *General Truck Drivers, Local 270, etc. (Diaz Drayage)* v. *N.L.R.B.*, 102 App. D.C. 238, 252 F. 2d 619, cert. den., 356 U.S. 931; *Local 636, Plumbers, etc.* v. *N.L.R.B.*, 108 App. D.C. 24, 278 F. 2d 858; *Superior Derrick Corporation* v. *N.L.R.B.*, 273 F. 2d 891, 895 (C.A. 5), cert. den., 364 U.S. 816; *N.L.R.B.* v. *Laundry, Linen Supply & Dry Cleaning Drivers, Local 928 (Southern Service)*, 262 F. 2d 617 (C.A. 9).[11]

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[11] That the *effect* of petitioner's picket line was to cause repeated work stoppages is powerful, if not conclusive, evidence that petitioner induced those stoppages. See *N.L.R.B.* v. *Local 294, Teamsters*, 284 F. 2d 887, 891, in which the Second Circuit stated (per Friendly, J.):

> When a secondary strike or concerted refusal to work has in fact occurred after activity at the situs of the secondary employer by the union engaged in the primary strike, it has been hard to resist the conclusion that the union induced or encouraged this, and we have said that in such a case no finding of intent is required, see *N.L.R.B.* v. *Business Machine and Office Appliance Mechanics Conference Board, supra,* 228 F. 2d at page 560, a conclusion sound in common sense if not in strict logic.

Not only did petitioner make no effort to assure employees approaching the picket line that the picket lines were purely "informational," and not intended to cause work stoppages, but, to the contrary, one picket refused to permit Tillis Gauthier, an employee of Dixie Machine, to go aboard the *Neva West* to make a repair, saying that "only people with personal belongings was allowed to go." Similarly, another picket, told by ILA delegate Theodore that the pickets were at the wrong place (outside the wharf), made a telephone call then replied, "We are not picketing the docks. *We are picketing the ships to keep the longshoremen from going on.*" [12]

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[12] Petitioner's argument that the foregoing statements constitute hearsay, which should not have been admitted or relied on by the Board, is wholly without merit. In the first place, Tillis Gauthier's testimony that a picket would not permit him to board the *Neva West* shows forbidden inducement not to work, wholly apart from Gauthier's testimony as to the reasons given by the picket for his action. See *Highway Truck Drivers, Local 107* v. *N.L.R.B.*, 107 U.S. App. D.C. 1, 3, 273 F. 2d 815, 818; *N.L.R.B.* v. *Chauffeurs, Teamsters & Helpers, Local 364*, 274 F. 2d 19, 22-23 (C.A. 7). In other words, so far as the hearsay rule is relevant to the crucial portion of Gauthier's testimony—that the picket said he could not go aboard the *Neva West*—the picket's statement was a verbal act not barred by the hearsay rule. 6 Wigmore, *Evidence*, Sec. 1772 (1940).

Secondly, the objection, if any, to ILA delegate Theodore's testimony that a picket said to him, "We are picketing the ships to keep the longshoremen from going on" turns more on the extent of the picket's knowledge as to the object of the picketing, and thus to the weight to be attributed to this testimony, than it does on any problem of hearsay. For, if Theodore's testimony had been that the NMU president made a statement as to the object of the picketing, there would be

In light of the foregoing facts, we submit that the Board could reasonably draw the inference that petitioner, by its picketing, induced and encouraged employees of the various secondary employers involved to refuse to perform work aboard the Delta and Bloomfield ships, conduct proscribed by subparagraphs (i) and (ii) of Section 8(b)(4). *N.L.R.B.* v. *Associated Musicians*, 226 F. 2d 900 (C.A. 2), cert. denied, 351 U.S. 962; *N.L.R.B.* v. *Local 294*,

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no question as to the admissibility of that testimony as an exception to the hearsay rule. See 5 Wigmore, *Evidence*, Sec. 1457, 1461, 1469, 1714, 1725, 1729 (1940). Since the picket's statement herein was made only after a telephone call (presumably to the NMU office) to determine where the pickets should be located, and since it was consistent with other evidence as to the purpose of petitioner's picketing, the Board properly took it into consideration in finding the picketing to have been for the purpose of inducing employees of secondary employers not to work aboard the Delta and Bloomfield ships.

Finally, to the extent petitioner claims that it was prejudiced because the pickets in question were not identified, the record shows that the picket's statement to Theodore was made at about 9:40 a.m. on June 17, 1963, at a specified location where only three pickets were present (Tr. 85-87). Similarly, the other picket's statement to Gauthier was made at the gangplank of the *Neva West*, where only two pickets were stationed during the 3½-day period of picketing (Tr. 64-65, 66, 70-71, 72-73, 79-81). In these circumstances, involving few pickets and precise times and places, it surely would have been possible for the Union to identify its own pickets and produce them at the hearing. Indeed, petitioner's failure to produce these pickets warrants the inference that, if called, they would not have denied the statements attributed to them. See *Interstate Circuit, Inc.* v. *U.S.*, 306 U.S. 208, 226; *Case* v. *N.Y. Central Ry. Co.*, 329 F. 2d 936, 937 (C.A. 2); *N.L.R.B.* v. *Kalof Pulp & Paper Corp.*, 290 F. 2d 447, 451 (C.A. 9).

Teamsters, 284 F. 2d 887 (C.A. 2); *Truck Drivers Local 728* v. *N.L.R.B.*, 332 F. 2d 693, 697 (C.A. 5); *N.L.R.B.* v. *Local 1065, Carpenters*, 330 F. 2d 779, 780 (C.A. 9).[13]

Similarly, the Board properly found an object of petitioner's conduct was to force a cessation of business between Delta, Bloomfield, and the various independent contractors responsible for the loading, unloading and servicing of the *Del Mar*, *Del Valle*, and *Neva West*. By this means, petitioner sought to visit sufficient economic distress upon Delta and Bloomfield that they, in turn, would bring pressure upon SIU and MEBA (with whom they had contracts) to compel the latter to cease picketing the *Maximus*.[14] This object was stated explicitly by NMU's port agent, George, in response to a protest by Bloomfield's vice president that Bloomfield was being subjected to losses in a situation it was powerless to resolve. George said, "We want you to be good and mad and make a lot of noise . . . I want you to call Paul Hall and tell him to call off the MEBA pickets on the *Maximus*." We submit that

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[13] The (ii) violation inheres in the fact, previously noted (*supra*, p. 14), that included in the coercion of neutral employers made unlawful by that subsection were "strike[s] and other economic retaliation." See *International Hod Carriers, etc., Local 1140 (Gilmore Construction Company)*, 127 NLRB 541, 545, n. 6, enforced, 285 F. 2d 397 (C.A. 8), cert. denied, 366 U.S. 903; *Plumbers and Pipefitters Local Union No. 142, AFL-CIO (Piggly Wiggly)*, 133 NLRB 307, 314; II Leg. Hist. 1523 (105 Cong. Rec. p. 14347).

[14] Cf. *United Marine Division, Local 333*, 107 NLRB 686, 710-711.

the means used to make Bloomfield and Delta "good and mad" was to picket their ships with the object of interrupting their business relations with States Marine Agency, T. Smith and Company, Best Electric Company, Dixie Machine, and Buck Kriehs and Company, an object plainly proscribed by subparagraph (B) of Section 8(b)(4). *N.L.R.B.* v. *Bangor Building Trades Council*, 278 F. 2d 287 (C.A. 1); *N.L.R.B.* v. *International Hod Carriers etc., Local 1140*, 285 F. 2d 397, 402 (C.A. 8), cert. den., 366 U.S. 903; *N.L.R.B.* v. *International Longshoremen's Association*, 331 F. 2d 712 (C.A. 3).

Nor is it of significance that petitioner's ultimate objective—that of forcing MEBA to cease picketing the *Maximus*—was not itself illegal. Regardless of petitioner's ultimate objective, its *immediate* objective was to force a cessation of business among the various secondary employers named above, an object plainly unlawful under Section 8(b)(4)(B). And, the law is clear, if *any* object of secondary conduct is among the objects proscribed by the Act, the conduct is illegal. *N.L.R.B.* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 689; *International Brotherhood of Electrical Workers, Local 501* v. *N.L.R.B.*, 341 U.S. 694, 700; *N.L.R.B.* v. *Local 74, United Brotherhood of Carpenters*, 341 U.S. 707, 713. "A finding of an illegal intermediate object is all that is required." *Amalgamated Meat Cutters & Butcher Workmen* v. *N.L.R.B.*, 99 App. D.C. 24, 237 F. 2d 20, cert. den., 352 U.S. 1015; *Local No. 636, Plumbers*, v. *N.L.R.B.*, 108 App. D.C. 24, 278 F. 2d 858; *N.L.R.B.* v. *Plumbers, Local 12*, 320 F. 2d 250, 254

(C.A. 1); *N.L.R.B.* v. *Local 294, Teamsters*, 273 F. 2d 696, 698 (C.A. 2); *N.L.R.B.* v. *Wine, Liquor & Distillery Workers Union*, 178 F. 2d 584, 586 (C.A. 2); *Superior Derrick Corp.* v. *N.L.R.B.*, 273 F. 2d 891, 896 (C.A. 5), cert. den., 364 U.S. 816; *N.L.R.B.* v. *Milk Wagon Drivers' Union*, 335 F. 2d 326, 329 (C.A. 7); *N.L.R.B.* v. *Washington-Oregon Shingle Weavers District Council*, 211 F. 2d 149, 151 (C.A. 9); *N.L.R.B.* v. *International Union of Operating Engineers*, 315 F. 2d 328 (C.A. 10).

II. Petitioner's Defenses are Without Merit

It is on the nature of its ultimate objective—to force MEBA to stop picketing the *Maximus*—that petitioner relies most heavily in arguing that the Board improperly found its picketing of the Delta and Bloomfield wharves unlawful. In the first place, petitioner asserts, its dispute with MEBA, which resulted in the retaliatory picketing of Delta and Bloomfield was not a "labor dispute" within the meaning of Section 2(9) of the National Labor Relations Act, hence the Board was wholly without jurisdiction. Secondly, even assuming there was an underlying "labor dispute," since petitioner's ultimate dispute was with another union, there was no "primary" employer, hence there could be no "secondary" boycott within the proscription of Section 8(b)(4)(i)(ii)(B). These defenses, we show below, are without merit. Also without merit, as we shall show, is petitioner's contention that the Board's decision invades its constitutionally protected right of free speech.

A. *An inter-union controversy concerning representation constitutes a "labor dispute" within the meaning of Section 2(9) of the Act*

Section 2(9) of the Act defines the term "labor dispute" as follows:

> The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

There can, we submit, be little question that the controversy giving rise to the picketing in this case falls within this definition. At the time of the events in question, petitioner represented the unlicensed personnel aboard the *Maximus*, and petitioner's affiliate, BMO, represented the licensed personnel. MEBA's picketing of the *Maximus* was, according to petitioner, "to force Cambridge [owner of the *Maximus*] to abandon its contract with BMO and, instead, enter into a contract with MEBA" (Brief, p. 2, n. 1). Its own picketing, contends petitioner, was meant to protect itself from MEBA's designs. Thus, even petitioner's characterization of the dispute makes it plain that its picketing was part of an effort to protect the job tenure and security of its memmers, and members of its affiliate, and to preserve its right to represent the employees on the *Maximus* and to administer the collective bargaining agreement it had with Cambridge Carriers. It is settled law that

such a conflict between unions over matters of representation or jurisdiction, is one which concerns "the association or representation of persons in negotiating . . . maintaining . . . or seeking to arrange terms or conditions of employment," and thus is "expressly included within the definition of 'labor dispute.'" *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 99-100; *U.S.* v. *Hutcheson*, 312 U.S. 219; *Fur Workers' Union, Local 72* v. *Fur Workers' Union*, 70 App. D.C. 122, 105 F. 2d 1, affirmed 308 U.S. 522; *Green* v. *Obergfell*, 73 App. D.C. 298, 121 F. 2d 46; *IBT* v. *Brewery Workers*, 106 F. 2d 871 (C.A. 9); *N.L.R.B.* v. *Local 101, Operating Engineers*, 315 F. 2d 328 (C.A. 10); *Duris* v. *Phelps Dodge Copper Products Corp.*, 87 F. Supp. 229 (D.C. N.J.). In *Matson Navigation Co.* v. *SIU*, 100 F. Supp. 730 (D.C. Md.), on facts virtually identical to those in this case, the Court rejected a contention that there was no "labor dispute" because the picketing sought to be enjoined was "retaliatory." Cf. also *Marine Cooks & Stewards* v. *Panama Steamship Co., Ltd.*, 362 U.S. 365; *Order of R.R. Telegraphers* v. *Chicago & N.W. R. Co.*, 362 U.S. 330.[15]

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[15] Most of the above-cited decisions, construing the term "labor dispute" to include interunion disputes over representation rights arose under the Norris-LaGuardia Act, 29 U.S.C. 101, 113. The definition of "labor dispute" in the two statutes is, however, virtually identical; indeed, the NLRA definition appears to have been taken from the Norris-LaGuardia definition. See S. Rep. No. 573, on S. 1958, 74th Cong., 1st Sess., 7 (1935), 2 Leg. Hist. NLRA 2307; *U.S.*

In sum, the breadth of the definition of "labor dispute," the construction given it by the Supreme Court (see, e.g., *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552, 560-561; *Lauf* v. *Shinner*, 303 U.S. 323), the manner in which the current dispute arose and petitioner's own characterization of it leave no doubt that the instant conflict is a "labor dispute" within the definition of Section 2(9).

Petitioner's reliance on *N.L.R.B.* v. *International Longshoremen's Association, and Local 1355*, 332 F. 2d 992 (C.A. 4), is misplaced. In that case the Fourth Circuit found, at pp. 995-996, that the ILA's conduct in implementing a policy calculated to eliminate trade with Cuba was not based on a controversy grounded in "terms and conditions of employment" but pertained to a "general political question, in which ILA shares an interest with all citizens." It is clear that the instant case bears none of the earmarks of a "general political question" in which the Union is expressing an interest as a "citizen," but is an ordinary conflict over representation and jurisdiction between two competing unions. Accordingly, petitioner's contention that the National Labor Relations Act is inapplicable to the instant case is wholly without merit.

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v. *Hutcheson*, 312 U.S. 219, 234, n. 4; *International Brotherhood of Teamsters* v. *Brewery Workers*, 106 F. 2d 871, 876-877 (C.A. 9). It is, of course, an accepted canon of statutory construction that similar words in similar statutes are generally to be construed alike. 82 C.J.S. Statutes, Sec. 365 *et seq.*

B. *The protection afforded a neutral employer by Section 8(b)(4) of the Act does not require that the union's ultimate dispute be with another employer, rather than another union*

As we have previously pointed out, petitioner does not deny that Delta, Bloomfield, or any of the other employers directly involved in these proceedings[16] are "secondary" or "neutral" employers within the contemplation of Section 8(b)(4) of the Act, the plain purpose of which is to protect such secondary employers from being subjected to economic pressures in disputes not their own. *N.L.R.B.* v. *Denver Building and Construction Trades Council*, 341 U.S. 675, 692. Petitioner argues, however, that the protections afforded by Section 8(b)(4) are not available to the employers involved in this case because petitioner's ultimate dispute was not with another or "primary" employer, but with another union. We submit that the Board properly rejected this contention.

Nothing in the language of Section 8(b)(4) supports petitioner's view that its operation is conditioned on the existence of a dispute with a primary employer. As noted, *supra*, pp. 13-14, that section makes it unlawful for a labor organization to engage in specified conduct where an object thereof is "forcing or requiring any person to . . . cease doing business with any other person . . .," not, as petitioner contends, where an object is "forcing or requiring any person to . . . cease doing business with any other

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[16] States Marine Agency, T. Smith and Company, Best Electric Company, Dixie Machine, and Buck Kriehs and Company.

person *with whom the labor organization has a primary dispute.*" Cf. *Miami Newspaper Pressmen's Local 46* v. *N.L.R.B.*, 116 U.S. App. D.C. 192, 322 F. 2d 405, 410. Thus, petitioner's argument is without support in the language of Section 8(b)(4).

Furthermore, the legislative history of the Labor-Management Relations Act of 1947 shows that one of the prime evils which Congress sought to eliminate by enactment of Section 8(b)(4) was the interference with a "neutral" employer's business relations resulting from inter-union representation or jurisdictional disputes.[17] Thus, the course of the debates shows that Congress in enacting Section 8(b)(4) was responding, at the very least, to President Truman's recommendation, in his January 6, 1947, State of the Union message, for legislation to prevent "certain unjustifiable practices."[18] In describing these practices President Truman stated:

> A second unjustifiable practice is the secondary boycott, when used to further jurisdictional disputes . . .
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> Not all secondary boycotts are unjustified. We must judge them on the basis of their objectives.

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[17] I Leg. Hist. of LMRA 1947, pp. 428, 658, 887 (Sen. Rep. No. 105 on S. 1126, 80th Cong., 1st Sess. p. 22, 93 Cong. Rec. 3449, 6385); II Leg. Hist. 981, 1047, 1056-1057, 1524, 1654 (93 Cong. Rec. 1844, 4035, 4122, A-2252, 7537.

[18] See, e.g., I Leg. Hist. of LMRA 1947, pp. 481-482, 887 (Sen. Minority Rep. No. 105, Pt. 2 on S. 1126, 80th Cong., 1st Sess., pp. 19-20; 93 Cong. Rec. 6385); II Leg. Hist. pp. 1034, 1047, 1108, 1341, 1491 (93 Cong. Rec. 4028, 4035, 4199, 4767, 5011).

> For example, boycotts intended to protect wage rates and working conditions should be distinguished from those in furtherance of jurisdictional disputes.[19]

And, as Senator Murray said,[20] "Throughout this debate we have had our attention focused on boycotts used in furtherance of jurisdictional disputes. . . ." Indeed, even those members of Congress opposing passage of Section 8(b)(4) agreed that boycotts arising out of inter-union disputes should be prohibited.[21] Their opposition to Section 8(b)(4) was predicated on the fact that the section went beyond the proscription of secondary boycotts used to further jurisdictional disputes, and prohibited other secondary boycotts which they believed were justified.[22] Those who supported the section agreed with Senator Taft that secondary boycotts could not be distinguished on the basis of their "good" or "bad" objectives, that it was necessary to go beyond the President's recommendations, and that all secondary boycotts should be un-

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[19] Quoted in II Leg. Hist. of LMRA 1947, p. 1511 (93 Cong. Rec. 5112).

[20] II Leg. Hist. of LMRA 1947, p. 1367 (93 Cong. Rec. 4844-4845).

[21] I Leg. Hist. of LMRA 1947, p. 481 (Sen. Minority Rep. No. 105, Pt. 2, on S. 1126, 80th Cong., 1st Sess., p. 19); II Leg. Hist. 1047, 1108, 1368 (93 Cong. Rec. 4035, 4199, 4845) .

[22] I Leg. Hist. of LMRA 1947, pp. 481, 887 (Sen. Minority Rep. No. 105, Pt. 2, on S. 1126, 80th Cong., 1st Sess., p. 19, 93 Cong. Rec. 6385); II Leg. Hist. 1034, 1047, 1108, 1341, 1368 (93 Cong. Rec. 4028, 4035, 4199, 4767, 4845).

lawful.[28] In short, the legislative history conclusively demonstrates that the use of economic pressure on neutral employers to resolve inter-union disputes was the very core of the conduct which Congress sought to prohibit by its 1947 enactment of Section 8(b)(4).

It is true that in the usual type of secondary boycott case, the union utilizing pressure on neutral employers is seeking, as its ultimate objective, to force another ("primary") employer to take action which he has previously refused to take, e.g., to recognize the union or to sign a contract with it. In the instant case, however, the employer ultimately involved, Cambridge Carriers (owner of the *Maximus*) was already under contract with petitioner, so that petitioner sought not to force Cambridge to take action, but to support it in not taking action, that is, in not contracting with MEBA. But surely this difference is not sufficient to free petitioner from the proscriptions of Section 8(b)(4). For, whatever the nature of petitioner's ultimate objective in picketing Delta and Bloomfield, whether it was to force Cambridge to take action favorable to it, to assist Cambridge in not taking action unfavorable to it, or, as petitioner would have it, simply to force MEBA to cease picketing the *Maximus*, the crucial factor is that the impact on Delta, Bloomfield, and the other secondary employers is precisely the same. They are, as the employer in the more typical secondary boycott case, subject to economic pressure because of a dispute with which

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[28] II Leg. Hist. of LMRA 1947, pp. 1106, 1491, 1524, 1654 (93 Cong. Rec. 4198, 5011, A-2252, 7537).

they have no concern. See *I.B.E.W.* v. *N.L.R.B.*, 181 F. 2d 34, 37 (C.A. 2), affirmed, 341 U.S. 694. This is precisely the evil which Congress sought to cure in enacting Section 8(b)(4), the purpose of which was, as the Supreme Court stated, to shield "unoffending employers and others from pressures in controversies not their own" (*N.L.R.B.* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 692, or, as this Court recently put it, "to confine labor conflicts to the employer in whose labor relations the conflict had arisen, and to wall off the pressures generated by that conflict from unallied employers" (*Miami Newspaper Pressmen's Local No. 46* v. *N.L.R.B.*, 116 U.S. App. D.C. 192, 197, 322 F. 2d 405, 410).

It would, in short, be totally inconsistent with the "central legislative purpose" (*Miami Newspaper Pressmen's, supra*) of Section 8(b)(4) to hold that section inapplicable to economic pressures on neutral employers growing out of union contests for representation rights, merely because of the happenstance that the union imposing the pressures is, for the moment, allied in interest with the employer ultimately involved. Cf. *Johnson* v. *United States*, 163 F. 30, 32 (C.A. 1) (Holmes, J.), quoted in *U.S.* v. *Hutcheson*, 312 U.S. 219, 235. Thus, we submit, the Board properly held petitioner's economic pressures on Delta, Bloomfield, and the other secondary employers unlawful, despite petitioner's claim that it had no dispute with any employer, and sought merely to force MEBA to cease picketing the *Maximus*. See *N.L.R.B.* v. *Washington-Oregon Shingle Weavers District Council*, 211 F. 2d 149, 152 (C.A. 9). See also, *N.L.R.B.*

v. *Local Union No. 751, Carpenters*, 285 F. 2d 633, 639 (C.A. 9); *N.L.R.B.* v. *Local 11, United Brotherhood of Carpenters*, 242 F. 2d 932, 934-935 (C.A. 6); *McLeod* v. *Local 295, International Brotherhood of Teamsters*, 56 LRRM 2977 (D.C. E.D.N.Y.), July 17, 1964. Cf. *Miami Newspaper Pressmen's Local No. 46* v. *N.L.R.B.*, 116 App. D.C. 192, 197, 322 F. 2d 405.

Petitioner's reliance upon *Douds* v. *ILA*, 224 F. 2d 455 (C.A. 2), cert. den., 350 U.S. 873, for the proposition that "A dispute with a primary employer is a *sine qua non* to a secondary boycott" (Brief, p. 14), is misplaced.[24] Petitioner quotes a portion of the *Douds* opinion in which the court discusses the "usual meaning" of the term "secondary boycott"; the omitted portion makes plain the court's view that Section 8(b)(4) "does indeed go further" than the prohibition of a secondary boycott "in the usual meaning of that term" (*id.* at 458-459). Upon examination of the entire decision in *Douds*, it is apparent that the rationale for the court's decision was not that there was no dispute with a primary employer, but rather that the only "object" proscribed by Section 8(b)(4) is the union's ultimate object, i.e., "the concluding state of things that the actor seeks to bring about: . . . not . . . those that are only intermediate to it" (*id.* at 460). Since the union's ultimate object was

[24] *Douds* was an appeal by certain individuals and eight locals of the ILA from an order imposing prison sentences and fines as punishment for contempt of a District Court order in a proceeding brought under Section 10(1) of the Act. The Second Circuit (2-1) reversed the contempt order.

not to cause a cessation of business between two employers, but to wrest representation rights from another union, the court held its conduct not to be unlawful. While this is, in essence, what petitioner would have this Court hold, suffice it to say that this theory—that a "cease doing business" objective is not proscribed by Section 8(b)(4) if it is but a means to an end—is inconsistent with both prior and subsequent decisions of the Supreme Court,[25] this Court,[26] and other courts including the Second Circuit itself, which has not once cited or relied upon *Douds*.[27] To the contrary, these courts have consistently held that if any object, ultimate or otherwise, of a union's con-

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[25] *N.L.R.B.* v. *Denver Building & Construction Trades Council*, 341 U.S. 675, 689; *Local 1976, Carpenters* v. *N.L.R.B.*, 357 U.S. 93, 98.

[26] *Amalgamated Meat Cutters & Butcher Workmen* v. *N.L.R.B.*, 99 App. D.C. 24, 237 F. 2d 20, cert. denied, 352 U.S. 1015 ("A finding of an illegal intermediate objective is all that is required"). See also, *Local No. 636, Plumbers* v. *N.L.R.B.*, 108 App. D.C. 24, 278 F. 2d 858; *Truck Drivers Local 728* v. *N.L.R.B.*, 101 App. D. C. 420, 249 F. 2d 512, cert. denied, 355 U.S. 958.

[27] *N.L.R.B.* v. *Wine, Liquor & Distillery Workers Union*, 178 F. 2d 584, 586 (C.A. 2); *N.L.R.B.* v. *Associated Musicians*, 226 F.2d 900 (C.A. 2), cert. denied, 351 U.S. 962; *N.L.R.B.* v. *Local 294, Teamsters*, 273 F. 2d 696, 698 (C.A. 2); *N.L.R.B.* v. *Plumbers, Local 12*, 320 F. 2d 250, 254 (C.A. 1); *Superior Derrick Corp.* v. *N.L.R.B.*, 273 F. 2d 891, 896 (C.A. 5), cert. denied, 364 U.S. 816; *N.L.R.B.* v. *Milk Wagon Drivers' Union*, 335 F. 2d 326, 329 (C.A. 7); *N.L.R.B.* v. *Washington-Oregon Shingle Weavers District Council*, 211 F. 2d 149, 151 (C.A. 9); *N.L.R.B.* v. *International Union of Operating Engineers*, 315 F. 2d 328 (C.A. 10).

duct is to force a cessation of business, that conduct is violative of Section 8(b)(4)(B) of the Act. Thus, we submit, *Douds* was a sport in the law, perhaps explained by the fact that it was a criminal contempt proceeding, but, in any event, of little aid to petitioner here.[28]

C. *Petitioner's constitutional argument is without substance*

The Board's finding that the purpose of petitioner's picketing was to induce work stoppages among employees of secondary employers, once accepted (see pp. 15-22, *supra*), forecloses petitioner's argument that by finding such picketing illegal the Board infringed petitioner's right of free speech, guaranteed by the First Amendment. ". . . [T]he prohibition of

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[28] Nor does the *Tulse Hill* case, *N.L.R.B.* v. *International Longshoremen's Association*, *supra*, 332 F. 2d 992, support petitioner's argument that a dispute with a primary employer is a *sine qua non* to a Section 8(b)(4) violation. Enforcement was denied the Board's order in that case not because the union had no dispute with a primary employer, but because, in the court's view, there was a total absence of any "labor dispute" within the meaning of the Act. *Id.* at 996. The instant case, in which a "labor dispute" was present (see pp. 23-25, *supra*) is thus quite distinguishable from *Tulse Hill*. Furthermore, while the seemingly plain presence of a "labor dispute" in the instant case has led us not to press the argument, we believe, for essentially the reasons stated at pp. 26-33, *supra*, that the *Tulse Hill* case was wrongly decided, and that even if a union's ultimate dispute is not a "labor dispute" as defined in the Act, the utilization of economic pressure on a neutral employer in connection with that dispute is proscribed by Section 8(b)(4)(B) of the Act.

inducement or encouragement of secondary pressure by Section 8(b)(4)(A) [now 8(b)(4)(i)(B)] carries no unconstitutional abridgment of free speech . . ." *IBEW* v. *N.L.R.B.*, 341 U.S. 694, 705; see also *Truck Drivers and Helpers, Local 728* v. *N.L.R.B.*, 101 App. D.C. 420, 423, 249 F. 2d 512, 515, cert. den., 355 U.S. 958.

Also without merit is petitioner's attack on the Board for having taken notice, in determining the purpose of petitioner's picketing, of "the fact that in the maritime-longshore industry, a picket line is known for its 'signal' effect" (D&O 3, TXD 7). Initially, the Labor Board was, in part, created for the purpose of doing precisely what it did here, that is, developing and bringing to bear on cases coming before it a practical grasp of the realities of life in the labor-management field. See *N.L.R.B.* v. *Seven-Up Bottling Co.*, 344 U.S. 344; *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U.S. 793, 800; *Local 1976, Carpenters* v. *N.L.R.B.*, 357 U.S. 93. Indeed, "neither the courts nor administrative bodies should ignore the realities of life and disregard common knowledge even though such knowledge may not have achieved a place within the purview of judicial notice." *Continental Can Company, Inc.* v. *U.S.*, 272 F. 2d 312, 315 (C.A. 2). It would, we submit, have been a disregard of "common knowledge" were the Board, in determining the purpose of petitioner's picketing, to have taken no notice of what is a truism of industrial relations—that in highly organized industries, such as the maritime-longshore industry, a picket

line will nearly always result in work stoppages regardless of the legend on the picket sign.[29]

This is not, of course, to hold, as petitioner suggests the Board here held, that *all* picketing by maritime unions is *per se* unlawful, a view which, we agree with petitioner, would be constitutionally untenable. The Board has never taken this view, nor does it here. Thus, in the instant case, the Board did not, in determining the legality of petitioner's picketing, rely solely on the "signal" effect of picketing in the maritime industry, but considered and, indeed, regarded as "most persuasive . . . the record evidence which affirmatively establishes [petitioner's] intention of using the picket line as a signal for union members, employed by persons engaged on the [Delta and Bloomfield] ships to cease work" (D&O 3). In short, the signal effect of picketing in the maritime-longshore industry was but one element considered by the Board in reaching its conclusion that an object of petitioner's picketing was to induce work stoppages among secondary employees. By taking this factor into account the Board did not infringe petitioner's right of free speech, but simply utilized the practical knowledge of labor relations which it

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[29] *Printing Specialties and Paper Converters Union, Local 388, AFL* v. *LeBaron*, 171 F. 2d 331, 334 (C.A. 9); *N.L.R.B.* v. *Associated Musicians*, 226 F. 2d 900, 904 (C.A. 2), cert. denied, 351 U.S. 962; *Piezonki* v. *N.L.R.B.*, 219 F. 2d 879, 880, 881 (C.A. 4); *Superior Derrick Corp.* v. *N.L.R.B.*, 273 F. 2d 891, 896 (C.A. 5), cert. denied, 364 U.S. 816; cf. Teller, *Picketing and Free Speech*, 56 Harv. L. Rev. 180, 200-208 (1942).

was intended to, and has, developed in carrying out its statutory function of administering the National Labor Relations Act.

Finally, while petitioner cites and relies on *N.L.R.B.* v. *Fruit and Vegetable Packers*, 377 U.S. 58, that case held only that the "signal" effect of consumer picketing was insufficient to support the view that Congress intended, in enacting Section 8(b)(4)(ii), to outlaw *all* consumer picketing at the premises of secondary employers. Here, the Board has not held the "signal" effect of picketing in the maritime-longshore industry sufficient to outlaw *all* picketing at the premises of secondary employers, but simply that this effect, known to a picketing union, is a factor to be taken into account in determining whether that union, by its picketing, intended to induce refusals to cross the picket line. Cf. *Sales Drivers, Helpers & Building Construction Drivers, Local 859* v. *N.L.R.B.*, 97 U.S. App. D.C. 173, 229 F. 2d 514, cert. den., 351 U.S. 972.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for review should be denied and that a decree should issue enforcing the Board's order in full.

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November 1964.

APPENDIX

Norris-LaGuardia Act, 29 U.S.C. 101, 113(c)

The term "labor dispute" includes any controversy concerning terms and conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

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REPLY BRIEF FOR PETITIONER.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18789

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Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION TO REVIEW AND CROSS-APPLICATION TO ENFORCE A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

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ON PETITION TO REVIEW AND CROSS-APPLICATION TO ENFORCE A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

REPLY BRIEF FOR PETITIONER.

1. Cases arising under the Norris-LaGuardia Act, 29 U. S. C. §101 *et seq.*, are not authority for finding a "labor dispute" in the instant case.

In its various opinions dealing with the NMU informational picketing, the Board, although recognizing that the controversy did not fit within the Section 2(9) definition of a "labor dispute," took the position that it still had the right to exercise jurisdiction. In its Brief on this appeal, however, the Board apparently now is ready to concede that the existence of a Section 2(9) labor dispute is an essential jurisdictional pre-requisite, and, instead, argues, contrary to its prior position, that the NMU picketing *was* related to a labor dispute as defined in the Act. To accomplish this reversal of position, the Board cites a number of cases arising under the Norris-LaGuardia Act, 29 U. S. C. A. §101 *et seq.*, holding that the federal courts do not have jurisdiction to issue injunctions in cases involving inter union disputes. The Board argues that these cases

are applicable because the Norris-LaGuardia definition of a labor dispute is similar to the National Labor Relations Act definition. A review of these cases, and of the Norris-LaGuardia Act itself, however, discloses not only that these authorities do not sustain the Board's argument, but, on the contrary, actually are further authority for petitioner's position.

Most of the cases cited by the Board deal with controversies which, unquestionably, fall within the definition of a "labor dispute."[1] By far the more important distinction, however, lies in the Norris-LaGuardia Act itself, for Section 13(a) of that Act, 29 U. S. C. A. §113(a), which the Board omitted from its Brief, specifically extends the coverage of that Act to inter union controversies. Section 13 provides:

> "When used in this chapter, and for the purposes of this chapter—(a) A case shall be held to involve or to grow out of a *labor dispute* when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations

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[1] *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91 (1940), involved a protest by milk delivery men against their employer's adoption of a new distribution system which was eliminating their jobs. Cf. *Local 107, etc. and Safeway Stores, Inc.*, 134 NLRB No. 130 (1961). *Fur Workers Union, Local No. 72* v. *Fur Workers Union*, 105 F. 2d 1 (D. C. Cir. 1939), *aff'd* 308 U. S. 522, was a clear case of recognitional picketing, but it should be noted that there the Court relied more on Section 13(a) than on Section 13(c) of the Norris-LaGuardia Act in refusing to issue an injunction. *Green* v. *Obergfell*, 121 F. 2d 46 (D. C. Cir. 1941); *IBT* v. *Brewery Workers*, 106 F. 2d 871 (9th Cir. 1939), and *NLRB* v. *Local 101, Operating Engineers*, 315 F. 2d 328 (10th Cir. 1963), are all examples of jurisdictional disputes. *Duris* v. *Phelps Dodge Copper Products Corp.*, 87 F. Supp. 229 (D. N. J. 1949), was a dispute over recognition. In *Matson Navigation Co.* v. *S. I. U.*, 100 F. Supp. 730 (D. Md. 1951), where the picketing was retaliatory, the Court relied heavily on the wording of Section 13(a) of the Norris-LaGuardia Act and, in fact, specifically rejected the argument that Section 13(c) could be considered separately from Section 13(a), see 100 F. Supp. at 937. The other cases cited by the Board similarly emphasize Section 13(a).

> of employers and one or more employers or associations of employers; or (3) *between one or more employees or associations of employees and one or more employees or associations of employees;* or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) or 'persons participating or interested' therein (as defined in this section).
>
> ". . . .
>
> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." (Emphasis supplied).

Section 13(a) makes it clear that the Norris-LaGuardia Act "comprehends activities beyond those arising out of the employer-employee relationship," *Quality Limestone Products, Inc.* v. *Drivers, etc., Local 695,* 207 F. Supp. 75, 77 (1962). Comparing Section 13(a) with Section 13(c), it is apparent that Section 13(c) is much narrower in its scope, indicating that Congress, when it enacted the Norris-LaGuardia Act, realized that the Section 13(c) definition did not cover an inter-union dispute and, therefore, thought it necessary to specifically include such controversies in Section 13(a). The very existence of Section 13(a) in the Norris-LaGuardia Act shows that Congress was aware of this important definitional problem, and the absence from the National Labor Relations Act, 29 U. S. C. A. §140 *et seq.*, of a provision comparable to Section 13(a) of the Norris-LaGuardia Act compels the conclusion that Congress did not intend that the Labor Board should have jurisdiction over controversies of this nature. Accordingly, the Board's argument based on the Norris-LaGuardia Act is without merit.

2. The Board's attempt to treat the NMU informational picketing as a jurisdictional dispute is without merit.

Confronted with the admitted absence of a dispute with a primary employer, counsel for the Board apparently now seeks to argue that the NMU informational picketing was illegal because it was incidental to a "jurisdictional dispute." This contention, which was not raised before the Board, is without any merit whatsoever.

The term "jurisdictional dispute" is not one to be loosely used. It is a term of art having a very definite and limited meaning. When the Taft-Hartley amendments were added to the National Labor Relations Act, Congress made specific provision for the settlement of jurisdictional disputes. See Sections 8(b)(4)(D) and 10(k) of the National Labor Relations Act, 29 U. S. C. A. §158(b)(4)(D) and 29 U. S. C. A. §160(k). It would be a sufficient answer to the Board's argument to merely point out that NMU has not been charged under Section 8(b)(4)(D) of the Act. Resort to an argument based on the pleadings is not necessary, however, for it is clear that the NMU informational picketing was not in any way related to a jurisdictional dispute. Both the Supreme Court and the Board have had occasion to define the term jurisdictional dispute, and have specifically limited it to controversies between employees of the *same* employer over *that* employer's assignment of work. Thus, in *NLRB* v. *Radio Engineers Union*, 364 U. S. 573, 579, (1961), the Court stated:

> "And the clause 'the dispute out of which such unfair labor practice shall have arisen' can have no other meaning except a jurisdictional dispute under §8(b)(4)(D) which is a dispute *between two or more groups of employees over which is entitled to do certain work for an employer.*" (Emphasis supplied).

Similarly, in *Local 107, etc. and Safeway Stores, Inc.*, 134 NLRB, No. 130 (1961), the Board held that Section 8(b)(4)(D) does not apply to picketing by a union which is protesting the contracting out of work formerly done by

its members. In dismissing the charge, the Board found that the union's dispute actually was with the employer over the contracting out of work, and not with other employees, and, therefore, did not fall within the jurisdictional dispute provision. The Board thus limited Section 8(b)(4)(D) to disputes between *employees of the same employer over work assignments.*

It is clear from the foregoing two cases that the NMU informational picketing had nothing whatsoever to do with a jurisdictional dispute. First, there was no dispute between employees of the same employers—MEBA had no employees on the *"Maximus"* and there were no NMU members on the picketed vessels—and, secondly, NMU was not claiming the right to do work which was being done by MEBA or vice versa. Accordingly, the jurisdictional dispute provisions of the National Labor Relations Act are inapplicable. *NLRB* v. *Radio Engineers Union, supra; Local 107, etc. and Safeway Stores, Inc., supra.*

The Board's efforts to interject the concept of a jurisdictional dispute into this case graphically demonstrates the danger of trying to extend the Taft-Hartley amendments to situations which were not specifically before Congress when the legislation was enacted. In its Brief, the Board refers to legislative history voicing concern over the evils of jurisdictional disputes. This legislative history is extensive and unquestionably Congress was well aware of the problem involved. The Taft-Hartley amendments were hotly contested, however, and the final result was the product of many compromises. As related above, Section 8(b)(4)(D), when, finally enacted, did not comprehend the instant kind of dispute, and as set forth in NMU's original Brief, the legislative history of Section 8(b)(4)(B) shows that this section was considered only in the context of disputes with primary employers. In view of the vigorous controversy in Congress over the secondary boycott amendments, the absence of any legislative history indicating that Section 8(b)(4)(B) was intended to apply where there was no dispute with a primary employer requires the conclusion that Congress did

not intend to restrict union activity under such circumstances.

Nor does the Board's argument that the picketing affected "secondary" or "neutral" employers (Brief, page 26), in any way meet the objection that the secondary boycott provisions are not applicable in the absence of a dispute with a primary employer. If the involvement of a "secondary" or "neutral" employer were the sole test of a secondary boycott, all picketing and all strike activity would be barred. See, *e.g.*, *Local 761* v. *NLRB (General Electric)*, 366 U. S. 667 (1961). The Supreme Court frequently has rejected such a construction of Section 8(b)(4) and, even in the cases cited by the Board, has held that the Act does not bar picketing merely because it has an effect on neutrals. *E.g.*, *Carpenters Union* v. *NLRB (Sand Door)*, 357 U. S. 93 (1958). Bearing in mind the Supreme Court's admonition that "Congress has consistently refused to prohibit peaceful picketing except where it is used as a means to achieve specific ends which experience has shown to be undesirable," *NLRB* v. *Fruit & Vegetable Packers*, 12 L. Ed. 2d 129, 133 (1964), the Board's inability to cite any legislative history indicating that Section 8(b)(4) was to apply in the circumstances of the instant case requires rejection of the argument that the NMU picketing was barred merely because it may have had an effect on neutrals.

3. The Board's argument that other evidence, aside from the alleged "signal" effect of the NMU informational picketing, supports the finding that NMU acted for an illegal purpose is not substantiated by the record.

As set forth in Petitioner's original Brief (Pages 16-17), the Board relied primarily on the concept of "signal" picketing to support its finding that the NMU picketing was for an illegal objective. This holding, we submit, is in violation of the First Amendment to the United States Constitution in that it would regulate and restrict freedom of speech not on the basis of what is being said, but rather

on the basis of the response of others to that speech. Implicit in the Board's holding is the right of other unions, in industries where picketing does not have this alleged signal effect, to engage in the identical kind of picketing without being in violation of the Act. Such discrimination in the exercise of the right of freedom of speech is a clear infringement of the First Amendment. See *Thornhill* v. *Alabama*, 310 U. S. 88 (1940).

In order to escape this constitutional argument, the Board now contends that the alleged "signal" effect of the picketing was only one of several elements supporting the Board's finding of an illegal objective and that the "signal" effect of the picketing was considered only as part of the overall picture. However, the only "other evidence" to which the Board refers is the testimony of Edward Theodore, Jr., and Tillis Gauthier, of what *unidentified* pickets told them,—testimony which the trial examiner properly excluded as hearsay, but which was erroneously accepted by the Board (See Petitioner's Brief, page 18),—and a statement by NMU Port Agent George to Bloomfield Vice-President, Gerard E. Weickoff, which is fully discussed in Footnote 8 of Petitioner's original Brief.

A review of the record discloses a complete absence of any substantial evidence that the NMU picketing was for an illegal objective. Moreover, it is clear from the Board's opinion that it was relying primarily on the alleged signal effect of the picketing, a finding which is in violation of the First Amendment. Accordingly, on this basis alone, the

Board's Decision and Order should be set aside and enforcement denied.

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PETITION FOR REHEARING.

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PETITION FOR REHEARING.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT:

National Maritime Union of America, AFL-CIO, respectfully prays your Honorable Court for a rehearing to the end that the decision of this Court of April 15, 1965, be set aside, and that the order of the National Labor Relations Board be reversed upon the following grounds:

The instant controversy was initiated following the transfer of the vessel, S.S. "*Maximus*", from Grace Line, Inc. to Cambridge Carriers, Inc. While the vessel was being operated by Grace Line, Inc., the unlicensed crew had been represented by the National Maritime Union of

America, AFL-CIO (NMU), and the licensed marine engineers had been represented by the Marine Engineers Beneficial Association (MEBA). In the opinion of April 15, 1965, this Court erroneously assumed that the unlicensed personnel had been represented by Seafarers International Union (SIU) prior to the transfer of the vessel, and that MEBA was an affiliate of SIU. This assumption is completely contrary to the undisputed facts. MEBA and SIU are separate labor organizations and are not affiliated, and SIU was not involved in this dispute at all.

Following the transfer of the vessel, the unlicensed personnel selected NMU as their collective bargaining representative while the ship's officers, including the licensed marine engineers, selected the Brotherhood of Marine Officers (BMO). Shortly after acquiring the S.S. "*Maximus*", Cambridge Carriers, Inc. obtained a charter to transport medical supplies from Philadelphia, Pennsylvania, to Cuba in connection with the ransom payments arising out of the Bay of Pigs invasion. When the "*Maximus*" arrived in Philadelphia to be loaded, MEBA began to picket the vessel, in order to destroy the company and jobs of its employees solely because the vessel's licensed engineers were not represented by MEBA. This picketing successfully forestalled the loading operation and immobilized the vessel.

In an effort to restrain the picketing, Cambridge Carriers, Inc. filed an unfair labor practice charge against MEBA with the National Labor Relations Board in Philadelphia, but the Board ruled that it lacked jurisdiction over the MEBA because it was a union of supervisory personnel and therefore outside of the National Labor Relations Act.

With the vessel thus immobilized and the unlicensed personnel represented by NMU in danger of losing their jobs, NMU sought to appeal to MEBA engineers on other vessels to prevail upon their leadership to stop the picketing of the "*Maximus.*" The picketing was purely informational in character with the signs stating:

"INFORMATION
PICKETING

MEBA Engineers
Interfere
With Employers
Who Lawfully
Recognize
N.M.U."

This publicity effort was directed to MEBA members in various ports to the end that they would stop the picketing which, while obviously improper, was beyond the reach of the National Labor Relations Board.

The dispute thus was one between NMU and MEBA, two labor unions, and therefore did not constitute a "labor dispute" as defined in the National Labor Relations Act, 29 U. S. C. A. §152 (9). Moreover, it is apparent that the NMU picketing did not relate to any dispute involving a primary employer.

Delta Steamship Lines, Inc. and Bloomfield Steamship Company, owners of some of the vessels where the MEBA was being picketed, brought unfair labor practice charges against NMU alleging violations of Section 8 (b) (4) (i) (ii) (B) of the Act, 29 U. S. C. A. §158 (b) (4) (i) (ii) (D). After a hearing the Trial Examiner dismissed these charges on the ground that the NMU picketing, being directed against another union, was not for an illegal objective. The Board, however, reversed, holding that a dispute with a primary employer was not necessary to a secondary boycott and that the existence of a labor dispute was not even necessary to support an unfair labor practice charge. This Court, after an incorrect analysis of the facts, affirmed the Board. In its review of the facts, this Court mistakenly viewed the controversy as a dispute between NMU and SIU even though it is clear that SIU was not involved in any way. Moreover, the Court assumed that there was a dispute between NMU and MEBA over the jobs involved when, in fact, NMU and MEBA do not even represent the

same type of employees. This latter error lead the Court to the erroneous conclusion that a jurisdictional dispute was involved, completely overlooking the fact that no charge was ever filed under the jurisdictional dispute provisions of the Act. In view of this basic error in the Court's reasoning a rehearing should be granted, and the decision reversed.

In sustaining the Board's decision, this Court has so interpreted the Act as to extend the jurisdiction of the National Labor Relations Board into areas never contemplated by Congress: (1) It held that there need not be a labor dispute between an employer and a union in order to support an unfair labor practice charge; (2) It held that there could be a secondary boycott even in the absence of a dispute with a primary employer; and (3) It held that a union could be found guilty of an unfair practice even where its picketing was clearly informational. In making these holdings, this Court came into direct conflict with the decision of the Court of Appeals for the Fourth Circuit in *National Labor Relations Board* v. *International Longshoremen's Association (Tulse Hill)*, 332 F. 2nd 992 (4th Cir. 1964), where Chief Judge Sobeloff specifically held that the existence of a labor dispute was an indispensable element to unfair labor practice charges. By removing the requirement that there be a "labor dispute," this Court's holding subjects a labor union to the control of the National Labor Relations Board with respect to all its activities, whether they be social, political or otherwise.

The decision of the Court is also in direct conflict with the decision of the Court of Appeals for the Second Circuit in *Douds* v. *International Longshoremen's Association*, 224 F. 2nd 445 (2nd Cir.), *cert. denied*, 350 US 873 (1955), which held that picketing directed against another union was not for an illegal objective and therefore not prescribed by Section 8(b)(4)(i)(ii)(B) of the Act.

Finally, in holding that NMU's picket line was not informational, but was signal picketing in character, this Court not only has placed an incredible burden upon the shoulders of any union which engages in picketing, but

has taken away from union men their right under the First Amendment to engage in freedom of speech. If this same picketing had been done by an organization of Cubans who wanted the medical supplies to be on their way to Cuba, there could not have been even the slightest doubt that this picketing would have been protected by the First Amendment. If the wives of NMU seamen had picketed with these identical signs in order to save the jobs of their husbands, there could be little doubt that such a picket line would be protected by the First Amendment. The Board, and, indeed, even this Court found as a fact that the objective of the NMU picketing,—to induce the MEBA to stop the illegal picketing of the "*Maximus*"— was in all respects proper and legal. Under these circumstances, this Court's holding that picketing which is for a proper objective and which, if conducted by other organizations within our society, would be protected by the First Amendment, becomes illegal solely because it is done by a labor union, is completely contrary to the right of freedom of expression guaranteed by the First Amendment of the Constitution. In this day and age where the Supreme Court has been careful to protect the right of labor unions to engage in free speech, an interpretation of the National Labor Relations Act which would deny unions the right to engage in conduct permitted to others is clearly contrary to the Congressional intention of not restricting picketing except in certain specific situations. See *NLRB* v. *Fruit and Vegetable Packers*, 12 L. Ed. 2d 129 (1964). In the instant case NMU was the victim, not the perpetrator of illegal picketing. NMU sought to protect the jobs of its members by exercising its right of free speech and appealing directly to the rank and file membership of MEBA. The effect of the instant decision prohibiting such an appeal is to punish NMU while encouraging continued lawlessness by MEBA.

For the foregoing reasons, it is respectfully submitted that this Court, laboring under a mistaken understanding of the facts and the law, rendered an erroneous decision which should be reversed.

Respectfully submitted,

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Certification.

I hereby certify that the within Petition for Rehearing is filed in good faith and not for purposes of delay.

ABRAHAM E. FREEDMAN.

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